

## Exhibit 1

Fair Isaac Corporation v. Federal Insurance  
Company et al.  
Court File No. 16-cv-1054

11

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MINNESOTA  
3 -----  
4 Fair Isaac Corporation, ) File No. 16-cv-1054(DTS)  
5 a Delaware Corporation, )  
6 Plaintiff, )  
7 v. )  
8 Federal Insurance Company, ) Courtroom 14W  
9 an Indiana corporation, ) Minneapolis, Minnesota  
10 and ACE American Insurance ) Thursday February 16, 2023  
11 Company, a Pennsylvania ) 9:12 a.m.  
12 Corporation, )  
13 Defendants. )  
14 -----

14 BEFORE THE HONORABLE DAVID T. SCHULTZ  
15 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

16 (JURY TRIAL PROCEEDINGS - VOLUME II)

22 Proceedings recorded by mechanical stenography;  
23 transcript produced by computer.

24 \* \* \*

12

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\* \* \*

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(IN OPEN COURT)

(Jury seated)

(9:12)

4 THE COURT: Good morning, everyone. Please be  
5 seated.  
6 Mr. Hinderaker, are you ready?  
7 MR. HINDERAKER: I am, Your Honor.  
8 THE COURT: All right. You may proceed. Thank  
9 you.  
10 A JUROR: Your Honor, our screen doesn't work.  
11 THE COURT: It's on now?  
12 A JUROR: Yes.  
13 THE COURT: Everyone else, your screens are all  
14 up? Okay. Good.  
15 MR. HINDERAKER: Good morning, everyone.  
16 Yesterday Judge Schultz mentioned about the rule  
17 of law, and for me, that's the very best reason that there  
18 is for me to be a lawyer. I know that all of us have  
19 something else to do than be here, but I do hope that  
20 regardless of the outcome, regardless of -- for my client or  
21 against my client, regardless of the outcome, that after our  
22 weeks of work together, you think that this effort and this  
23 experience has been worthwhile as well because we all are at  
24 the moment participating together in the rule of law of this  
25 country.

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1 **A. Oh, yes. No, they would certainly require other**  
2 **software components.**  
3 **Q.** Okay. Blaze is also typically added to customers'  
4 already existing computer applications, right?  
5 **A. Yes.**  
6 **Q.** And large companies may sometimes have hundreds of  
7 different components working with Blaze in a single computer  
8 application?  
9 **A. Yes.**  
10 **Q.** So when Blaze is used in these applications at large  
11 companies like Chubb, Blaze is one component of a  
12 multi-faceted complex system?  
13 **A. Yes.**  
14 **Q.** We can agree that when FICO sells Blaze to a client like  
15 Chubb, Blaze itself does not contain the actual rules,  
16 right?  
17 **A. Correct.**  
18 **Q.** And the actual idea of all of the rules comes from  
19 humans?  
20 **A. Correct.**  
21 **Q.** And you testified during your direct examination that  
22 Blaze Advisor provides some value to insurance companies,  
23 right?  
24 **A. Yes.**  
25 **Q.** As a general matter, though, you agree that it would be

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1 very difficult to try to measure the value that Blaze  
2 provides to a particular company?  
3 **A. Difficult, yes, but not unachievable.**  
4 **Q.** But you personally would not be capable of quantifying  
5 the value that Blaze provides to a customer?  
6 **A. Correct, in a monetary sense.**  
7 **Q.** So let's talk a little bit more about the world of  
8 insurance. I think you said during direct that you have a  
9 cursory understanding of insurance, right?  
10 **A. That is correct.**  
11 **Q.** That means fairly basic, right?  
12 **A. Agreed.**  
13 **Q.** You have never been an insurance agent or a broker?  
14 **A. No.**  
15 **Q.** You have never been an insurance underwriter?  
16 **A. No.**  
17 **Q.** You have never worked in the technology group of an  
18 insurance company?  
19 **A. Nope.**  
20 **Q.** And you've never worked in the claims side of an  
21 insurance company?  
22 **A. No.**  
23 **Q.** You've never held any position at an insurance company?  
24 **A. Nope. Only a customer.**  
25 **Q.** And you haven't conducted, as part of your work at FICO,

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1 any survey of Chubb customers regarding why they purchase  
2 insurance from Chubb?  
3 **A. Repeat the question.**  
4 **Q.** As part of your work at FICO, you haven't ever set out  
5 to conduct a survey of Chubb customers to find out why  
6 they're purchasing insurance from Chubb?  
7 **A. I have not, no.**  
8 **Q.** You don't even know what the term gross written premium  
9 or GWP means, right?  
10 **A. I do not.**  
11 **Q.** You spoke during direct about some problem-solving  
12 exercises you did for some unnamed insurance companies at  
13 the beginning of your discussion with Mr. Hinderaker.  
14 Do you remember that?  
15 **A. Yes.**  
16 **Q.** That was not specific to Chubb. That was your general  
17 experience?  
18 **A. General experience, correct.**  
19 **Q.** And then you started talking about Chubb and you said it  
20 was apparent that Blaze was central to Chubb's systems,  
21 right?  
22 **A. Yes.**  
23 **Q.** You said it was pivotal?  
24 **A. Yes.**  
25 **Q.** Correct?

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1 **A. Correct.**  
2 **Q.** But when it comes to the use of Blaze at Chubb, you are  
3 only vaguely familiar with how the software was used, right?  
4 **A. I was very familiar with how the software was used in**  
5 **the context of everything else that they were doing,**  
6 **correct. But to what actual decisions they were using it,**  
7 **no.**  
8 **Q.** Is it true that you were only vaguely familiar with how  
9 the software was used at Chubb?  
10 **A. Yes.**  
11 **Q.** All you knew was that Blaze may have been used in an  
12 underwriting and claim fraud application, but beyond that,  
13 you didn't have any intimate knowledge of how Chubb actually  
14 used Blaze, correct?  
15 **A. Yes.**  
16 **Q.** If we could put up the fourth slide that you used during  
17 your direct examination, Vanessa?  
18 MR. HINDERAKER: The one that's numbered 4.  
19 MS. GODESKY: Yes. Thank you.  
20 BY MS. GODESKY:  
21 **Q.** So this slide is titled "The Business Value of Blaze  
22 Advisor," right, Mr. Baseman?  
23 **A. Yes.**  
24 **Q.** And the first bullet says, Blaze reduces the time and  
25 costs to develop decision-making applications.

<p style="text-align: right;">183</p> <p>1 <b>A. Yes.</b></p> <p>2 <b>Q.</b> And that's a general statement, right, Mr. Baseman? You</p> <p>3 have not done anything in the course of your work at FICO to</p> <p>4 specifically analyze the extent to which Blaze reduced time</p> <p>5 at Chubb?</p> <p>6 <b>A. Correct.</b></p> <p>7 <b>Q.</b> And then your third bullet says, new applications can be</p> <p>8 developed and changes to existing applications can be made</p> <p>9 faster than was possible before Blaze, right?</p> <p>10 <b>A. Yes.</b></p> <p>11 <b>Q.</b> But you haven't analyzed and you don't have any</p> <p>12 information from the course of your work at FICO that allows</p> <p>13 you to say whether it's true that new applications were</p> <p>14 developed faster at Chubb because of Blaze, correct?</p> <p>15 <b>A. Not so. So we do have customers that continue</b></p> <p>16 <b>relationships with FICO, which they talk about how much</b></p> <p>17 <b>value that they've received and we have those kind of</b></p> <p>18 <b>conversations.</b></p> <p>19 <b>Q.</b> But specifically at Chubb, you cannot identify a</p> <p>20 particular application that was developed faster at Chubb</p> <p>21 because of Blaze?</p> <p>22 <b>A. Only through heuristic conversations, yes.</b></p> <p>23 <b>Q.</b> And you also can't measure or talk about how quickly</p> <p>24 Chubb was able to make changes to its internal computer</p> <p>25 applications because of Blaze. You haven't measured that,</p>	<p style="text-align: right;">185</p> <p>1 made and whether they were made faster at particular points</p> <p>2 in time because of Blaze?</p> <p>3 <b>A. Only heuristically, yes.</b></p> <p>4 <b>Q.</b> Your sixth bullet talks about rule statements for</p> <p>5 decision can be changed faster, new insurance products can</p> <p>6 be brought to market faster, each product being a unique set</p> <p>7 of rule statements, right?</p> <p>8 <b>A. Correct.</b></p> <p>9 <b>Q.</b> Can you specifically identify any insurance product that</p> <p>10 Chubb was able to bring to market faster because of Blaze?</p> <p>11 <b>A. No.</b></p> <p>12 <b>Q.</b> And based on all of this, Mr. Baseman, you are not in a</p> <p>13 position to say whether Blaze had any specific impact at all</p> <p>14 on Chubb's revenue or profit, correct?</p> <p>15 <b>A. Mathematically, no.</b></p> <p>16 <b>Q.</b> Okay. So I want to talk about briefly what goes into</p> <p>17 removing Blaze from a computer application. If a large</p> <p>18 company has integrated Blaze into multiple applications, it</p> <p>19 can be complex to remove the software, correct?</p> <p>20 <b>A. Potentially.</b></p> <p>21 <b>Q.</b> And it could take days, months or even years to unravel</p> <p>22 from internal systems, correct?</p> <p>23 <b>A. To unravel -- potentially.</b></p> <p>24 <b>Q.</b> And you're saying potential because there's no typical</p> <p>25 length of time. It's going to depend on the nature of the</p>
<p style="text-align: right;">184</p> <p>1 right?</p> <p>2 <b>A. Of their existing ones?</b></p> <p>3 <b>Q.</b> Correct.</p> <p>4 <b>A. Correct.</b></p> <p>5 <b>Q.</b> Your fourth bullet says, each insurance policy requires</p> <p>6 a unique set of rule statements for deciding on whether to</p> <p>7 offer an applicant a policy and at what price, right?</p> <p>8 <b>A. Yes.</b></p> <p>9 <b>Q.</b> But just to be clear, you have not studied the specific</p> <p>10 policies that Chubb offers and figured out exactly which</p> <p>11 rules were being run against which lines of business?</p> <p>12 <b>A. No.</b></p> <p>13 <b>Q.</b> Your fifth bullet is Blaze enhances business agility</p> <p>14 because rule statement changes can be made quickly, correct?</p> <p>15 <b>A. Yes.</b></p> <p>16 <b>Q.</b> But you didn't get any information in the course of your</p> <p>17 work at FICO in terms of how quickly Chubb was implementing</p> <p>18 rule changes, right?</p> <p>19 <b>A. Not necessarily, no. So in the -- can I elaborate?</b></p> <p>20 <b>Q.</b> Not necessarily, no, is good for now. Thank you.</p> <p>21 And you also don't have any specific information</p> <p>22 on whether they actually did implement rule changes at</p> <p>23 various points in time, correct?</p> <p>24 <b>A. No. They certainly did make various rule changes, yes.</b></p> <p>25 <b>Q.</b> Can you specifically identify rule changes that were</p>	<p style="text-align: right;">186</p> <p>1 company, right?</p> <p>2 <b>A. It would be dependent on the nature of how the</b></p> <p>3 <b>integration was done, what their software development life</b></p> <p>4 <b>cycles were, yes.</b></p> <p>5 MS. GODESKY: I'm almost done, Your Honor, if I --</p> <p>6 THE COURT: That's fine.</p> <p>7 BY MS. GODESKY:</p> <p>8 <b>Q.</b> Now, the amount of time you spent working on Blaze has</p> <p>9 shifted over time, correct?</p> <p>10 <b>A. Yes.</b></p> <p>11 <b>Q.</b> And it has declined in recent years, fair?</p> <p>12 <b>A. Yes.</b></p> <p>13 <b>Q.</b> In 2016, you were spending about 80 percent of your time</p> <p>14 on Blaze, right?</p> <p>15 <b>A. 2016? Yes.</b></p> <p>16 <b>Q.</b> By 2021, when you'd provided deposition testimony in</p> <p>17 this case, you were only spending about 10 percent of your</p> <p>18 time on Blaze?</p> <p>19 <b>A. Correct.</b></p> <p>20 <b>Q.</b> And that's because there was the introduction of this</p> <p>21 new FICO product called Decision Modeler, the cloud-based</p> <p>22 product, right?</p> <p>23 <b>A. Partially, yes.</b></p> <p>24 <b>Q.</b> And for the most part, Decision Modeler, the cloud-based</p> <p>25 product, and Blaze do the same things?</p>

<p>1 UNITED STATES DISTRICT COURT 2 DISTRICT OF MINNESOTA</p> <p>3 ----- 4 Fair Isaac Corporation, ) File No. 16-cv-1054(DTS) 5 a Delaware Corporation, ) 6 Plaintiff, ) 7 v. ) 8 Federal Insurance Company, ) Courtroom 14W 9 an Indiana corporation, ) Minneapolis, Minnesota 10 and ACE American Insurance ) Friday, February 17, 2023 11 Company, a Pennsylvania ) 8:40 a.m. 12 Corporation, ) 13 Defendants. ) 14 -----</p> <p>15 BEFORE THE HONORABLE DAVID T. SCHULTZ 16 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE</p> <p>17 (JURY TRIAL PROCEEDINGS - VOLUME III)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 Proceedings recorded by mechanical stenography; transcript 23 produced by computer. 24 * * * 25</p>	<p>239</p> <p>1 I N D E X 2 PAGE</p> <p>3 JEAN-LUC MARCE 4 Cross-Examination by Mr. Fleming 254 5 Redirect Examination by Ms. Kliebenstein 266</p> <p>6 BENJAMIN BAER 7 Direct Examination by Mr. Erbele 269 8 Cross-Examination by Mr. Fleming 293 9 Redirect Examination by Mr. Erbele 300</p> <p>10 RUSSELL SCHREIBER - DEPOSITION 11 Examination by Ms. Janus 310</p> <p>12 BENJAMIN BAER - OFFER OF PROOF 13 Direct Examination by Mr. Erbele 367 14 Cross-Examination Mr. Fleming 390</p> <p>15 RUSSELL SCHREIBER - DEPOSITION 16 Examination by Ms. Janus 401 17 Examination by Mr. Hinderaker 438</p> <p>18 JANDEEN BOONE 19 Direct Examination by Mr. Hinderaker 441 20 Cross-Examination by Ms. Godesky 489</p> <p>21 Offer of Proof 367</p> <p>22 PLAINTIFF EXHIBITS REC'D 23 133 308 24 145 460 25 P1171 242 P1172 242 P1174 242</p>
<p>240</p> <p>1 APPEARANCES:</p> <p>2 For Plaintiff: MERCHANT &amp; GOULD P.C. 3 BY: ALLEN W. HINDERAKER 4 HEATHER J. KLIEBENSTEIN 5 PAIGE S. STRADLEY 6 MICHAEL A. 7 JOSEPH W. DUBIS 8 GABRIELLE L. KIEFER 9 150 South Fifth Street, #2200 10 Minneapolis, Minnesota 55402</p> <p>11 For Defendants: FREDRIKSON &amp; BYRON 12 BY: TERRENCE J. FLEMING 13 LEAH C. JANUS 14 CHRISTOPHER D. PHAM 15 RYAN C. YOUNG 16 PANHIA VANG 17 200 South Sixth Street, #4000 18 Minneapolis, Minnesota 55402</p> <p>19 O'MELVENY &amp; MYERS LLP 20 BY: LEAH GODESKY 21 ANTON METLITSKY 22 DARYN E. RUSH 23 ROXANA GUIDERO 24 Times Square Tower 25 7 Times Square New York, New York 10036</p> <p>26 Court Reporters: RENEE A. ROGGE, RMR-CRR KRISTINE MOUSSEAU, CRR-RPR MARIA V. WEINBECK, RMR-FCRR PAULA RICHTER, RMR-CRR-CRC United States District Courthouse 300 South Fourth Street, Box 1005 Minneapolis, Minnesota 55415</p> <p>27 * * *</p>	<p>242</p> <p>1 (IN OPEN COURT) 2 (8:40 a.m.)</p> <p>3 THE COURT: All right. Good morning, everyone.</p> <p>4 We're on the record in the matter of Fair Isaac 5 Corporation versus Federal, et al., Civil Number 16-1054.</p> <p>6 We're here, all lawyers, assembled outside the 7 presence of the jury so I can tell you what we're going to 8 do regarding the various case studies, white papers and 9 consultant reports. I'm going to tell you first what the 10 ruling is, and then I'm going to give you detailed rationale 11 about why I'm doing what I'm doing.</p> <p>12 So I'm going to exclude the following exhibits: 13 P1024, P1025, P1028, P295, P932, and P1170.</p> <p>14 I will allow in P1171, P1172, and P1174 with some 15 redactions to two of those documents.</p> <p>16 So, first, as regards P1024, P1025, and P1028, 17 these were produced to the defendants six weeks ago as 18 supplementation of prior discovery, but on the face of the 19 documents they were written in 2021. And so I'm going to 20 exclude them on that basis, not because they should have 21 been produced in discovery, discovery was closed by then, 22 but the supplementation is too late.</p> <p>23 I will have further comments about the consultant 24 report that is, I believe, P10 -- I believe it's 1024. All 25 right.</p>

<p style="text-align: right;"><b>259</b></p> <p>1 A. No, I'm not familiar with that.</p> <p>2 Q. And you're not familiar with how insurance companies use</p> <p>3 Blaze, are you?</p> <p>4 A. Only from a good educated guess. We -- based on what</p> <p>5 we've been told by our internal teams, about product</p> <p>6 management team, we know what kind of things their insurance</p> <p>7 may use rules for, so -- and we have actually built some</p> <p>8 examples based on insurance claims use cases, but this</p> <p>9 example is more like my examples base on what our</p> <p>10 understanding is, but we have no expertise really in this</p> <p>11 area.</p> <p>12 Q. So when I took your deposition back in January of</p> <p>13 2021 -- if you could turn to page 90 of that deposition</p> <p>14 transcript.</p> <p>15 A. 90. Yes. Go ahead.</p> <p>16 Q. And on lines 16 to 18, in response to the question, "Are</p> <p>17 you familiar with how insurance companies use Blaze</p> <p>18 Advisor," your response was, "No, I'm not."</p> <p>19 A. That's correct. I have no expertise in that.</p> <p>20 Q. Okay. Now, to determine how important or useful that</p> <p>21 Blaze would be to any specific customer, you would have to</p> <p>22 know how the customer is using Blaze, right?</p> <p>23 A. Right.</p> <p>24 Q. Would you not be able to do that without taking a deep</p> <p>25 dive into how their IT systems work.</p>	<p style="text-align: right;"><b>261</b></p> <p>1 correct."</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. Now, you don't know how Chubb used Blaze?</p> <p>4 A. Only inferring from all of our use cases we've heard</p> <p>5 about and again from general knowledge in this area.</p> <p>6 Q. Could you turn to page 70?</p> <p>7 A. 70, yes.</p> <p>8 Q. Your response to the question, "Did you ever have any</p> <p>9 knowledge of how the defendants in this case were using the</p> <p>10 Blaze software at your company," your response was "No, I do</p> <p>11 not."</p> <p>12 A. That's correct.</p> <p>13 Q. And that was a truthful answer, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And you don't know the Chubb applications that</p> <p>16 used Blaze?</p> <p>17 A. I am not familiar with any specifics in their</p> <p>18 application.</p> <p>19 Q. You don't know how many of Chubb software applications</p> <p>20 use Blaze?</p> <p>21 A. Correct.</p> <p>22 Q. And you don't know the purpose of Chubb software</p> <p>23 applications that use Blaze?</p> <p>24 A. No, I was not involved in their software applications.</p> <p>25 Q. Were you even aware that Chubb was a customer of FICO</p>
<p style="text-align: right;"><b>260</b></p> <p>1 A. Well, I don't have expertise. I don't know exactly how</p> <p>2 they build the system, but from, indirectly, from our per</p> <p>3 marketing, per management says teams, we know indirectly how</p> <p>4 product customers use our products, so we have an overall</p> <p>5 understanding of that.</p> <p>6 Q. Okay. Could you turn to page 111 of your deposition?</p> <p>7 A. 111, yes.</p> <p>8 Q. And starting at line 2 in response to the question, "And</p> <p>9 I guess what I'm saying is to tell how important Blaze is in</p> <p>10 any specific customer, you would have to look at how that</p> <p>11 customer is using Blaze within its systems," and your</p> <p>12 response was "Right." Correct?</p> <p>13 A. Yes, to be precise in one particular case, you have to</p> <p>14 look at the particular case. So, generally speaking, we</p> <p>15 know roughly how the product is used by our customers, but</p> <p>16 only on general terms. For a specific case you have to look</p> <p>17 at the very specific system.</p> <p>18 Q. But in response to my question, when I asked you to</p> <p>19 "tell how important Blaze is in any specific customer, you</p> <p>20 would have to look at how that customer is using Blaze</p> <p>21 within its system," and you said, "Right." Correct?</p> <p>22 A. Correct.</p> <p>23 Q. And in response to the question, "So you wouldn't be</p> <p>24 able to tell this without taking sort of a deep dive into</p> <p>25 how their IT systems work," and your answer was, "That's</p>	<p style="text-align: right;"><b>262</b></p> <p>1 prior to this lawsuit?</p> <p>2 A. Only because I remember, I recall some -- I have vague</p> <p>3 memory of interactions with Chubb. I don't remember the</p> <p>4 years, but I remember the name from past interactions.</p> <p>5 Q. Well, you don't recall having any meeting with Chubb</p> <p>6 personnel?</p> <p>7 A. Not specific meetings, no.</p> <p>8 Q. Now, Blaze is not functional as sold; is that right?</p> <p>9 A. Could you rephrase the question? I'm not sure what you</p> <p>10 mean "functional."</p> <p>11 Q. Sure. It cannot be used out of the back. It's not</p> <p>12 usable as a stand-alone software?</p> <p>13 A. It is. You can be installing Blaze Advisor and start</p> <p>14 using it.</p> <p>15 Q. But Blaze is used with software application that provide</p> <p>16 business rule functionality; is that right?</p> <p>17 A. So you can -- so the typical structure of customer</p> <p>18 applications involve some elements of Blaze Advisor through</p> <p>19 the server and some elements of some various components that</p> <p>20 their customers have bid.</p> <p>21 You could also consider the Blaze Advisor as a</p> <p>22 stand-alone thing and start it and use it as it is, without</p> <p>23 having additional components. It could also be used</p> <p>24 directly without any such master application.</p> <p>25 Q. Could you turn to page 109, please?</p>

<p style="text-align: right;"><b>295</b></p> <p>1 right?</p> <p>2 A. I have an interest to represent the value that I am</p> <p>3 communicated to by our customers.</p> <p>4 Q. And your goal is for your salespeople to sell as many</p> <p>5 products that they can at the highest price they can?</p> <p>6 A. I suppose that's true.</p> <p>7 Q. Okay. Now, you're not involved with regard to the sales</p> <p>8 of Blaze to Chubb, right?</p> <p>9 A. I was not.</p> <p>10 Q. Okay. You didn't have any involvement with Chubb during</p> <p>11 your time at FICO, correct?</p> <p>12 A. I have not.</p> <p>13 Q. All right. You don't even know the salesperson who was</p> <p>14 involved in that sale; is that correct?</p> <p>15 A. I don't.</p> <p>16 Q. Now, you don't have any knowledge of Chubb's actual use</p> <p>17 of Blaze, right?</p> <p>18 A. I do not.</p> <p>19 Q. So you have no idea what value, if any, that Blaze has</p> <p>20 had with respect to Chubb's use of it?</p> <p>21 A. Not Chubb specifically, no, I don't.</p> <p>22 Q. Okay. Now, Blaze is a business process tool, a decision</p> <p>23 rule software, and you would agree that it has no</p> <p>24 functionality until the rules are created and inserted into</p> <p>25 the software?</p>	<p style="text-align: right;"><b>297</b></p> <p>1 Q. Okay. So you don't have any knowledge who was involved</p> <p>2 in the development of the rules that were implemented in</p> <p>3 Blaze for Chubb's use?</p> <p>4 A. I do not.</p> <p>5 Q. You have no knowledge of the actual rules created and</p> <p>6 implemented in Blaze by Chubb?</p> <p>7 A. I do not.</p> <p>8 Q. You don't know how many business rules were loaded, how</p> <p>9 many?</p> <p>10 A. I do not.</p> <p>11 Q. You don't know what type of business rules?</p> <p>12 A. I do not.</p> <p>13 Q. Could you turn to Exhibit 1171.</p> <p>14 A. Yes, sir.</p> <p>15 Q. On the bottom left hand, there's a reference to "New</p> <p>16 Blaze Advisor 7.4 authoring features empower greater</p> <p>17 business-user control and ease-of-use without requiring</p> <p>18 technical assistance" and it "now supports machine learning</p> <p>19 to further refine business decisions." Right?</p> <p>20 A. Yes.</p> <p>21 Q. And you realize that the Blaze version at issue in this</p> <p>22 trial is 7.1, not 7.4, right?</p> <p>23 A. I wasn't aware of that, but okay.</p> <p>24 Q. All right. And there are references -- well, let's go</p> <p>25 to the last page, page 3.</p>
<p style="text-align: right;"><b>296</b></p> <p>1 A. No different than Microsoft Office.</p> <p>2 Q. Okay. And I wasn't asking about Microsoft Office, but</p> <p>3 with regard to Blaze in particular.</p> <p>4 A. Again, like no enterprise software, you need to add</p> <p>5 value to it, yes.</p> <p>6 Q. And the reason is it's a general tool. It requires very</p> <p>7 distinct authorship and unique rules that connect back to</p> <p>8 the particular business, right?</p> <p>9 A. Correct, like most software.</p> <p>10 Q. And whether Blaze is useful to a customer depends in</p> <p>11 part on the quality and usefulness of the actual rules</p> <p>12 created and implemented by the customer?</p> <p>13 A. That's correct.</p> <p>14 Q. And you would agree with Mr. Marce that the quality of</p> <p>15 the rules are very significant with regard to the efficacy</p> <p>16 of the applications that use Blaze?</p> <p>17 A. The efficacy of the software is predominantly controlled</p> <p>18 by the user itself of the software, that is correct. It is</p> <p>19 a tool and not a solution.</p> <p>20 Q. Okay. Now, when Chubb purchased Blaze, Chubb had to</p> <p>21 create and implement the rules to put into the software,</p> <p>22 correct?</p> <p>23 A. I would presume so. I was not there.</p> <p>24 Q. FICO had no part in it?</p> <p>25 A. Again, I wasn't even at the company at the time.</p>	<p style="text-align: right;"><b>298</b></p> <p>1 Now, I noted when you were asked about what</p> <p>2 companies use Blaze that you identified a number of</p> <p>3 companies except the very first one that's identified in</p> <p>4 this report, right? And what is that very first company</p> <p>5 that's identified?</p> <p>6 A. Southwest Airlines.</p> <p>7 Q. Southwest Airlines. Now, why didn't you identify that</p> <p>8 company as the one that was using Blaze rules?</p> <p>9 A. I missed it, to be honest with you.</p> <p>10 Q. You missed the first one?</p> <p>11 A. I missed the first one.</p> <p>12 Q. It wasn't because of the problems that they've been</p> <p>13 having, as has been publicized lately?</p> <p>14 A. Actually, no. And to the best of my knowledge, in my</p> <p>15 conversations with Southwest, our software has nothing to do</p> <p>16 with their problems.</p> <p>17 MR. FLEMING: Objection, nonresponsive, hearsay.</p> <p>18 THE COURT: That objection is sustained. The</p> <p>19 answer will be stricken.</p> <p>20 The jury is instructed to disregard the answer.</p> <p>21 BY MR. FLEMING</p> <p>22 Q. Let's look at Exhibit 1172. There's a number of</p> <p>23 benefits listed on the left. And you don't know if Chubb</p> <p>24 received any of those benefits through its use of Blaze, do</p> <p>25 you?</p>



<p>1 UNITED STATES DISTRICT COURT 2 DISTRICT OF MINNESOTA</p> <p>3 ----- 4 Fair Isaac Corporation, ) File No. 16-cv-1054(DTS) 5 a Delaware Corporation, ) 6 Plaintiff, ) 7 v. ) 8 Federal Insurance Company, ) Courtroom 14W 9 an Indiana corporation, ) Minneapolis, Minnesota 10 and ACE American Insurance ) Tuesday, February 21, 2023 11 Company, a Pennsylvania ) 8:54 a.m. 12 Corporation, ) 13 Defendants. ) 14 -----</p> <p>15 BEFORE THE HONORABLE DAVID T. SCHULTZ 16 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE</p> <p>17 (JURY TRIAL PROCEEDINGS - VOLUME IV)</p> <p>18 19 20 21 22 Proceedings recorded by mechanical stenography; 23 transcript produced by computer. 24 * * * 25</p>	<p>516</p> <p>1 I N D E X 2 PAGE</p> <p>3 JANDEEN BOONE 4 Cross-Examination (Resumed) By Ms. Godesky 520 5 Redirect Examination By Mr. Hinderaker 538</p> <p>6 CHRISTOPHER PATRICK IVEY 7 Direct Examination By Ms. Kliebenstein 539 8 Cross Examination By Ms. Janus 597 9 Redirect Examination By Ms. Kliebenstein 612</p> <p>10 RAMESH PANDEY 11 Cross Examination By Mr. Hinderaker 621 12 Direct Examination 684 13 Recross Examination By Mr. Hinderaker 707</p> <p>14 15 16 17 18 19 20 21 22 23 24 25</p> <p>518</p> <p>12 DEFENDANTS' EXHIBITS REC'D 13 D280 533</p>
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<p style="text-align: right;"><b>608</b></p> <p>1 together some of these statements of work, you did not have</p> <p>2 any direct involvement with the Chubb account during your</p> <p>3 time at FICO, right?</p> <p>4 A. Correct. My, my -- I was limited in terms of, I</p> <p>5 developed the statements of work and worked with them on</p> <p>6 identifying what they wanted to do, but I didn't actually do</p> <p>7 any of the implementation at that time.</p> <p>8 Q. And you don't recall any meetings with Chubb, right?</p> <p>9 A. I don't.</p> <p>10 Q. You don't recall any discussions that you had with</p> <p>11 anyone at Chubb, right?</p> <p>12 A. Correct. I remember Henry Mirolyuz I think.</p> <p>13 Q. I think you've answered the question.</p> <p>14 A. Oh, sorry.</p> <p>15 Q. Thank you.</p> <p>16 You never worked on any products or projects for</p> <p>17 Chubb, correct?</p> <p>18 A. Correct.</p> <p>19 Q. You have no familiarity at all with how Blaze was</p> <p>20 implemented in Chubb, correct?</p> <p>21 A. I have a -- well, I have a rough understanding about how</p> <p>22 we were implementing Blaze in insurance companies at the</p> <p>23 time. But yes, no direct knowledge. I didn't work on the</p> <p>24 project.</p> <p>25 Q. You have no familiarity at all, would you say, with how</p>	<p style="text-align: right;"><b>610</b></p> <p>1 Did I read that correctly?</p> <p>2 A. You did, yes.</p> <p>3 Q. You don't know what kind of technology architecture</p> <p>4 Chubb had, correct?</p> <p>5 A. You're correct.</p> <p>6 Q. You testified about the SOWs documenting a transfer of</p> <p>7 knowledge from FICO to Chubb, right? But you weren't</p> <p>8 involved in actually implementing any of the projects that</p> <p>9 were discussed in the SOWs, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And you aren't aware of any situation in which FICO</p> <p>12 helped Chubb develop a particular rule, correct?</p> <p>13 A. I mean, I guess I'm aware of it in that we developed the</p> <p>14 statement of work to develop rules that was paid for, and I</p> <p>15 would have had a hard time -- I don't know why you would --</p> <p>16 So I would presume that out of that we delivered</p> <p>17 rules.</p> <p>18 Q. But you don't know whether FICO ever helped Chubb</p> <p>19 develop any particular rule that was implemented in Blaze,</p> <p>20 right?</p> <p>21 A. All I can say is, I did not personally develop a rule in</p> <p>22 Blaze, but again it was listed as a deliverable in some of</p> <p>23 the statements of work. So that we would help develop</p> <p>24 rules.</p> <p>25 Q. And you weren't involved in doing that?</p>
<p style="text-align: right;"><b>609</b></p> <p>1 Blaze was implemented at Chubb?</p> <p>2 A. Correct.</p> <p>3 Q. You don't know about specific projects that Chubb had</p> <p>4 involving Blaze, correct?</p> <p>5 A. I do in that again I developed statements of work for</p> <p>6 those projects.</p> <p>7 Q. But you don't have any personal knowledge of any of</p> <p>8 those projects or the details of them?</p> <p>9 A. I did not develop those projects, no.</p> <p>10 Q. You talked about some applications that were listed in</p> <p>11 the statements of work, correct?</p> <p>12 A. Correct.</p> <p>13 Q. But you don't know what Chubb applications used Blaze,</p> <p>14 correct?</p> <p>15 A. Well, I know the ones that were described in the</p> <p>16 statements of work used Blaze.</p> <p>17 Q. Can you look at your March 2019 deposition at page 84,</p> <p>18 please.</p> <p>19 A. Sure. March -- did you say page 84?</p> <p>20 Q. Yes.</p> <p>21 A. I'm sorry. I'm looking at the page numbers up there.</p> <p>22 Okay.</p> <p>23 Q. At line 15 I asked, "Do you know any of the applications</p> <p>24 that Blaze was used in?"</p> <p>25 And your answer was, "No."</p>	<p style="text-align: right;"><b>611</b></p> <p>1 A. That's correct.</p> <p>2 Q. You testified that when Blaze is delivered from FICO,</p> <p>3 it's not ready to run, right?</p> <p>4 A. That's correct.</p> <p>5 Q. It's like starting with a blank piece of paper?</p> <p>6 A. That's correct.</p> <p>7 Q. Blaze needs to be integrated into a customer's</p> <p>8 preexisting systems, right?</p> <p>9 A. Correct.</p> <p>10 Q. And generally, it's taking the business logic, I think</p> <p>11 you testified, right?</p> <p>12 A. Correct.</p> <p>13 Q. And -- go ahead.</p> <p>14 A. Correct.</p> <p>15 Q. And the business logic comes from Chubb, right?</p> <p>16 A. That's correct.</p> <p>17 Q. That is know-how that Chubb has developed over decades</p> <p>18 and decades and decades, right?</p> <p>19 A. That's correct.</p> <p>20 Q. The subject matter experts that work on the projects are</p> <p>21 Chubb employees, right?</p> <p>22 A. That's correct, for their business logic.</p> <p>23 Q. And Chubb's business logic is completely independent of</p> <p>24 Blaze, right?</p> <p>25 A. That's correct.</p>

<p style="text-align: right;"><b>688</b></p> <p>1 A. 1000 plus.</p> <p>2 Q. So now I want to focus on a specific type of software</p> <p>3 product, the rules based software products. Okay?</p> <p>4 A. Yep.</p> <p>5 Q. And if we can go to defendants' Demonstrative 4. Are</p> <p>6 all of these software products on defendants' Demonstrative</p> <p>7 4 rules programs?</p> <p>8 A. Yes. That's correct.</p> <p>9 Q. Have all of these programs been available in one form or</p> <p>10 another since the mid 2000s?</p> <p>11 A. Yes.</p> <p>12 Q. Which of these programs do you personally have</p> <p>13 experience using?</p> <p>14 A. FICO, IBM Operational Decision Manager, Drools, Pega and</p> <p>15 Red Hat Decision Manager.</p> <p>16 Q. So that's all of them, other than the SAS program,</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. What's your understanding of the functional difference,</p> <p>20 if any, between Blaze, FICO's program, and the IBM product,</p> <p>21 IBM Operational Decision Manager?</p> <p>22 A. Yeah. Operational Decision Manager from IBM, and FICO</p> <p>23 Blaze, no difference for us. No difference, functionally.</p> <p>24 Q. Okay. How about Blaze's, the product Blaze and Drools?</p> <p>25 Is there a functional difference in your mind between those</p>	<p style="text-align: right;"><b>690</b></p> <p>1 A. Not at all. Absolutely not.</p> <p>2 Q. Now, are all 13 of these applications the same size, or</p> <p>3 do they vary?</p> <p>4 A. No. They vary a lot. CSI Express is a big one, and</p> <p>5 others like TAPS and Premium Booking, these are very small.</p> <p>6 Q. Okay. Is CSI Express the biggest application on this</p> <p>7 chart?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And then if we could go to Defendants</p> <p>10 Demonstrative 6, please. So, Mr. Pandey, on defendants'</p> <p>11 Demonstrative 6, there are 1, 2, 3, 4, 5 different</p> <p>12 applications highlighted in gold. What's the significance</p> <p>13 of that?</p> <p>14 A. They are after policies sold, this is the -- these are</p> <p>15 the application. Their function only after the policy is</p> <p>16 sold. They are not part of the policy selling process.</p> <p>17 Q. So these applications don't have anything to do with the</p> <p>18 policy sale process?</p> <p>19 A. That's correct.</p> <p>20 Q. Now, there's another computer application that's being</p> <p>21 discussed in this case called Claims Connect. Are you</p> <p>22 familiar? Have you heard of that application?</p> <p>23 A. Yes, I am familiar with it.</p> <p>24 Q. Has Claims Connect ever used Blaze?</p> <p>25 A. No.</p>
<p style="text-align: right;"><b>689</b></p> <p>1 two products?</p> <p>2 A. No, for what we use for.</p> <p>3 Q. You mean in terms of how you use it at Chubb?</p> <p>4 A. Yeah. How we use it, yeah.</p> <p>5 Q. Do you have to use a software program to run rules in a</p> <p>6 computer application, or can software engineers write code</p> <p>7 for the rules themselves?</p> <p>8 A. The software engineers and software developers, they can</p> <p>9 code by themselves. In fact majority, 99 percent of the</p> <p>10 cases, all software developers, they code the rule by</p> <p>11 themselves.</p> <p>12 Q. So in 99 percent of the applications at Chubb, the</p> <p>13 developers are coding their own rules?</p> <p>14 A. Yes.</p> <p>15 Q. And was that true in the period before the ACE</p> <p>16 acquisition as well?</p> <p>17 A. That's correct. Yes.</p> <p>18 Q. Okay. I want to put up a list of some computer</p> <p>19 applications as defendants' Demonstrative 5, if we could,</p> <p>20 Vanessa. Thank you.</p> <p>21 Is it your understanding that Blaze was used in</p> <p>22 all 13 applications shown on the screen, Mr. Pandey?</p> <p>23 A. Yes.</p> <p>24 Q. Did the number of applications at Chubb using Blaze</p> <p>25 change after the acquisition by ACE?</p>	<p style="text-align: right;"><b>691</b></p> <p>1 Q. Was Blaze ever used in any application used to process</p> <p>2 insurance claims at Chubb?</p> <p>3 A. No.</p> <p>4 Q. And there's some discussion of another application</p> <p>5 called Small Commercial. Are you familiar with that</p> <p>6 application?</p> <p>7 A. Yes.</p> <p>8 Q. Was Blaze ever used in the Small Commercial application?</p> <p>9 A. No. Small Commercial uses a product called Duck Creek,</p> <p>10 which is a very powerful platform, that does enter in, and</p> <p>11 Claim Correct also uses the Duck Creek as a platform.</p> <p>12 Q. Duck Creek is another software program?</p> <p>13 A. Yes.</p> <p>14 Q. Do you remember Mr. Hinderaker asking you some questions</p> <p>15 about the CUW-IM application?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And he showed you some emails, Mr. Pandey, do you</p> <p>18 remember that talked about a project analysis and a Phase 1</p> <p>19 and then a Phase 2?</p> <p>20 A. Yeah, that's -- you do the high level design, and then</p> <p>21 you do the material design, and that's how you come up with</p> <p>22 an estimate. And based upon that estimate, then we decide</p> <p>23 if this project worth it or not. Then we put into the</p> <p>24 funding column, and then we get the funding and only when</p> <p>25 they approve, then the project starts.</p>

<p style="text-align: right;"><b>704</b></p> <p>1 developer to write the rules.</p> <p>2 Q. So the developers are coding the rules into Custom Mark?</p> <p>3 A. That's correct.</p> <p>4 Q. How many of the approximately 1500 software applications</p> <p>5 that were used at Chubb before the acquisition used rules in</p> <p>6 some way?</p> <p>7 A. All of them.</p> <p>8 Q. Okay. Now I want to quickly take a look at</p> <p>9 Exhibit P60 -- P960. I apologize. This is the -- I want to</p> <p>10 look at an excerpt from the 2018 Chubb annual report.</p> <p>11 A. Okay.</p> <p>12 Q. This is an excerpt that the jury saw during FICO's</p> <p>13 opening statement on page 15.</p> <p>14 Let me know when you are with me, Mr. Pandey. Do</p> <p>15 you see it on the screen?</p> <p>16 A. Yes, I can see it.</p> <p>17 Q. Okay. So the excerpt says, "In 2018 we continued to</p> <p>18 make significant progress with our small commercial business</p> <p>19 initiative globally. Starting from a relatively small base</p> <p>20 in '17, we produced strong double digit growth throughout</p> <p>21 the year achieving an annual run rate of over 1 billion in</p> <p>22 premium and project this business to exceed several billion</p> <p>23 dollars over time."</p> <p>24 And then it says, "In the US this is a highly</p> <p>25 automated digital experience where 80 percent or more of the</p>	<p style="text-align: right;"><b>706</b></p> <p>1 THE COURT: Overruled.</p> <p>2 BY MS. GODESKY:</p> <p>3 Q. So does this statement have anything to do with</p> <p>4 applications that use Blaze?</p> <p>5 A. No. No. This is the Duck Creek application. Duck</p> <p>6 Creek is the one which I was talking about. This is very</p> <p>7 odd platform which is start to finish, writing, policy,</p> <p>8 everything, forms, rate, underwriting experience,</p> <p>9 everything.</p> <p>10 Q. Mr. Pandey, you started your testimony with</p> <p>11 Mr. Hinderaker by confirming that Blaze has been removed</p> <p>12 from all of the applications at Chubb, correct?</p> <p>13 A. That's yes.</p> <p>14 Q. What programs have replaced Blaze in those applications?</p> <p>15 A. So Red Hat Decision Manager and the new one Drools.</p> <p>16 Q. Drools and Red Hat Decision Manager?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Have you received any complaints as the chief</p> <p>19 architect at Chubb about the switch from Blaze to those</p> <p>20 other rules software programs?</p> <p>21 A. Absolutely not.</p> <p>22 Q. And as the chief architect at Chubb, have you noticed</p> <p>23 any problems with the efficient functioning of your IT</p> <p>24 systems?</p> <p>25 A. No.</p>
<p style="text-align: right;"><b>705</b></p> <p>1 submissions are not touched by humans after they leave the</p> <p>2 agent's office. Technology is a competitive weapon."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. So there's a reference here, Mr. Pandey, to small</p> <p>6 commercial businesses. What does that refer to?</p> <p>7 A. It's a small commercial business, a big business like</p> <p>8 you have commercial specialty insurance which has for system</p> <p>9 like CSI Express. Similarly small business, small</p> <p>10 commercial business, it is a totally different division of</p> <p>11 Chubb, which does the insurance for mom and pop shops, say</p> <p>12 flower shop, your plumber, your electrician, 2, 3, 4, 5</p> <p>13 people company.</p> <p>14 They use this system because they want quick.</p> <p>15 They want fast. They want to go run on the weekends and</p> <p>16 nights because that's when they get their time. So this is</p> <p>17 a system straight-through, fast and always available for our</p> <p>18 small commercial customers.</p> <p>19 Q. And is this reference here, Mr. Pandey, to the fact that</p> <p>20 80 percent or more of the submissions are not touched by</p> <p>21 humans, does that have anything to do with applications that</p> <p>22 use Blaze?</p> <p>23 A. No. This is Duck Creek.</p> <p>24 MR. HINDERAKER: Objection, Your Honor. There's</p> <p>25 no foundation for Mr. Pandey.</p>	<p style="text-align: right;"><b>707</b></p> <p>1 Q. As the chief architect at Chubb, are you aware of any</p> <p>2 complaints about the rules not being processed fast enough</p> <p>3 without Blaze?</p> <p>4 A. No.</p> <p>5 MS. GODESKY: Okay. Thank you, Mr. Pandey. No</p> <p>6 further questions from me.</p> <p>7 THE COURT: Mr. Hinderaker, further</p> <p>8 cross-examination?</p> <p>9 MR. HINDERAKER: I do have some, yes.</p> <p>10 <u>REXCROSS EXAMINATION</u></p> <p>11 BY MR. HINDERAKER:</p> <p>12 Q. Did you write the annual report of 2018 for Chubb</p> <p>13 Limited?</p> <p>14 A. No, I did not.</p> <p>15 Q. And let me just ask you this question about what's said</p> <p>16 there.</p> <p>17 Separate from what particular technology the</p> <p>18 author may have had in mind, do you agree with the statement</p> <p>19 in the 2018 Chubb Limited annual report that technology is a</p> <p>20 competitive weapon? Yes or no.</p> <p>21 A. Yes.</p> <p>22 Q. Now, if I can find my notes.</p> <p>23 Thank you. I need all the help I can get.</p> <p>24 So, Mr. Pandey, I am not too interested in what</p> <p>25 applications you have that don't use Blaze Advisor. I am</p>

## EXHIBIT 1

<p style="text-align: right;"><b>739</b></p> <p>1 on the video and, if so, that will be mine.</p> <p>2 THE COURT: Thank you, Mr. Hinderaker. Go ahead.</p> <p>3 (LAWRENCE WACHS)</p> <p>4 EXAMINATION</p> <p>5 BY MS. JANUS:</p> <p>6 Q. Please state your name for the record?</p> <p>7 A. My name is Lawrence Wachs.</p> <p>8 Q. Are you represented by counsel for FICO here today?</p> <p>9 A. I am.</p> <p>10 Q. I want to start just with a little bit of background</p> <p>11 information. Where, where did you receive your education</p> <p>12 and tell us what degrees you obtained.</p> <p>13 A. I obtained a degree, bachelor of arts degree with a</p> <p>14 major in economics from Brooklyn College in 1968.</p> <p>15 Q. In what year were you born?</p> <p>16 A. 1947.</p> <p>17 Q. Are you currently employed?</p> <p>18 A. No.</p> <p>19 Q. What was your last -- most recent employment?</p> <p>20 A. IBM corporation in sales.</p> <p>21 Q. And what were the years that you were employed for IBM?</p> <p>22 A. 2009 through 2016.</p> <p>23 Q. What was your position with IBM?</p> <p>24 A. Sales.</p> <p>25 Q. What types of, what type of sales?</p>	<p style="text-align: right;"><b>741</b></p> <p>1 A. Exactly right.</p> <p>2 Q. Okay. Let's focus in then on the 2006 to 2008 time</p> <p>3 period when you were employed with Fair Isaac. Do you</p> <p>4 recall the month in 2006 that you began your employment with</p> <p>5 Fair Isaac?</p> <p>6 A. Not specifically, no.</p> <p>7 Q. We'll look at some documents, but it looks like you were</p> <p>8 there in the beginning of the year 2006, does that --</p> <p>9 A. That's correct.</p> <p>10 Q. Okay. So you started in the beginning of 2006. And</p> <p>11 when you began at Fair Isaac, what was your title?</p> <p>12 A. Sales executive.</p> <p>13 Q. Okay. What, what did your position involve as a sales</p> <p>14 executive?</p> <p>15 A. Locating organizations that could take advantage of the</p> <p>16 FICO software in order to achieve business benefit.</p> <p>17 COURT REPORTER: How do you spell FICO?</p> <p>18 MS. JANUS: F-I-C-O.</p> <p>19 COURT REPORTER: Got it.</p> <p>20 BY MS. JANUS:</p> <p>21 Q. Were you familiar with the software at FICO prior to</p> <p>22 beginning your work with them?</p> <p>23 A. Yes.</p> <p>24 Q. And how was that?</p> <p>25 A. The RulesPower software was comparable in its</p>
<p style="text-align: right;"><b>740</b></p> <p>1 A. Large programs, technology sales, software sales.</p> <p>2 Q. Okay. Prior to IBM, what was your employment?</p> <p>3 A. Fair Isaac. Fair Isaac.</p> <p>4 Q. What were your years of employment with Fair Isaac?</p> <p>5 A. 2006 to 2008.</p> <p>6 Q. What was your position with Fair Isaac?</p> <p>7 A. Technology sales.</p> <p>8 Q. Did you have a title?</p> <p>9 A. Sales executive, sales executive.</p> <p>10 Q. Prior to your position at FICO, what was your</p> <p>11 employment?</p> <p>12 A. Prior to fair -- FICO, I was employed by RulesPower, a</p> <p>13 technology start-up corporation.</p> <p>14 Q. What were the years of that employment?</p> <p>15 A. I'm not sure offhand, but it was ending in 2006,</p> <p>16 probably beginning in 2005.</p> <p>17 Q. And what was your position with -- what was it? Can you</p> <p>18 repeat the name?</p> <p>19 A. RulesPower, one word.</p> <p>20 Q. What was your position with RulesPower?</p> <p>21 A. Technology sales.</p> <p>22 Q. So from 1995 through 2016, you were in the technology</p> <p>23 sales industry as a --</p> <p>24 A. That's correct.</p> <p>25 Q. -- sales executive?</p>	<p style="text-align: right;"><b>742</b></p> <p>1 functionality and in fact, it's a matter record, I believe,</p> <p>2 that the software at FICO was actually the RulesPower</p> <p>3 software when FICO acquired the assets of RulesPower.</p> <p>4 Q. Was there a particular software that you were focused on</p> <p>5 selling during your time at FICO?</p> <p>6 A. Yes.</p> <p>7 Q. What was that?</p> <p>8 A. The name of the software was Blaze Advisor, and it was a</p> <p>9 decision management rules processing application.</p> <p>10 Q. Who did you work with while you were at FICO?</p> <p>11 A. I reported directly to a gentleman named John Haines,</p> <p>12 H-A-I-N-E-S.</p> <p>13 Q. What was his position?</p> <p>14 A. Manager of sales for Blaze Advisor for the northeast.</p> <p>15 Q. Once the client selected Fair Isaac as a vendor, what</p> <p>16 was your role, if any, in the deal going forward?</p> <p>17 A. Once we were advised that we were the selected vendor,</p> <p>18 we would communicate the salient facts about the sale to our</p> <p>19 contract administration process, who would have to render a</p> <p>20 contract that would be appropriate for the deal, reflective</p> <p>21 of the terms of the deal, including the price. I would work</p> <p>22 with senior management in establishing what that price would</p> <p>23 be, which is part of the selection process, but assuming</p> <p>24 that they've selected us already, we were already past that</p> <p>25 approval stage.</p>

<p style="text-align: right;"><b>795</b></p> <p>1 A. We were negotiating for a global ELA, correct.</p> <p>2 Q. Were you communicating with Sally about the status of</p> <p>3 those negotiations, do you recall?</p> <p>4 A. I was speaking with Sally fairly regularly at this</p> <p>5 point. It was a big deal, and so Sally was tracking its</p> <p>6 progress, and Sally did participate, it seems, according to</p> <p>7 this note, that we did do an on-site meeting with 30</p> <p>8 attendees to discuss the commercial side of the business and</p> <p>9 get closer to an ELA in 2007.</p> <p>10 Q. It was a big deal, meaning a big deal for FICO?</p> <p>11 A. Size, dollar size.</p> <p>12 Q. Yep. In the entry below the one you just referred to</p> <p>13 with the 30 attendees --</p> <p>14 A. Yes.</p> <p>15 Q. -- the document states, "Larry has been working with</p> <p>16 Chubb to get an ELA through this year. The total after</p> <p>17 credit for global ELA, including COBOL and SmartForms, was</p> <p>18 priced out at 1.5 million. I need to get an update on</p> <p>19 Chubb's response to the proposal." Is that right?</p> <p>20 A. Yes.</p> <p>21 Q. So is the 1.5 million proposal one that you provided</p> <p>22 after entering into the June 2006 portion of the license?</p> <p>23 A. Yes.</p> <p>24 Q. Do you recall how you provided that?</p> <p>25 A. No, I don't.</p>	<p style="text-align: right;"><b>797</b></p> <p>1 COBOL and SmartForms and the 1.3 number, where are you</p> <p>2 looking on the document?</p> <p>3 A. That's not contained on this.</p> <p>4 Q. And so there was -- there were conversations between you</p> <p>5 and Chubb that FICO could do the global ELA deal for 1.3</p> <p>6 million if COBOL and SmartForms were taken out of the --</p> <p>7 A. That's my understanding.</p> <p>8 Q. Do you recall who you had those conversations with?</p> <p>9 A. No. It would have been John Haines, and he in turn with</p> <p>10 Bill Waid.</p> <p>11 COURT REPORTER: And then in turn --</p> <p>12 THE WITNESS: And he in turn with Bill Waid.</p> <p>13 BY MS. JANUS:</p> <p>14 Q. Do you recall who at Chubb you had the conversations</p> <p>15 with?</p> <p>16 A. I, I don't have a specific recollection, but I would say</p> <p>17 Sully.</p> <p>18 Q. Did Sully express to you why it was important to Chubb</p> <p>19 to obtain a global license?</p> <p>20 A. It was beyond his purview. He is not a global person.</p> <p>21 Q. So he was just passing on requests from others at Chubb?</p> <p>22 A. That's right.</p> <p>23 Q. Showing you what has been marked as Exhibit 113. This</p> <p>24 is an e-mail from you to Mark Layden, Michael Gordon, Bill</p> <p>25 Waid, John Haines, Russ Schreiber on December 12th, 2006.</p>
<p style="text-align: right;"><b>796</b></p> <p>1 Q. Do you recall who you provided it to?</p> <p>2 A. Not specifically, no.</p> <p>3 Q. Do you recall any e-mails or discussions that you were</p> <p>4 having in this time period with Chubb relating to the global</p> <p>5 ELA?</p> <p>6 A. Yes.</p> <p>7 Q. Tell me what you recall.</p> <p>8 A. One negotiating point was that the 1.5 million was too</p> <p>9 high, and there was a determination to de-limit the ELA by</p> <p>10 two factors. One is a COBOL, that's capitol C-O-B-O-L,</p> <p>11 version of the software, and the second is to de-limit</p> <p>12 SmartForms, which is a functionality specifically included</p> <p>13 as an option, and together those would be \$200,000, which</p> <p>14 would bring down the price of the global ELA to 1.3 million</p> <p>15 dollars, which is consistent with the Waid's original.</p> <p>16 Q. That was consistent with the e-mail we looked at earlier</p> <p>17 today with the 1.6 and the 20 percent discount?</p> <p>18 A. Yeah -- well, Waid wasn't talking -- I don't know</p> <p>19 whether he was talking about a global ELA at that 1.3</p> <p>20 number. This appears to be 1.3 million.</p> <p>21 Q. Right. And we can -- I mean, the record speaks for</p> <p>22 itself.</p> <p>23 A. Yes.</p> <p>24 Q. We did look at an e-mail talking about global and that</p> <p>25 number; but when you're talking about the de-limiting of</p>	<p style="text-align: right;"><b>798</b></p> <p>1 The subject of the e-mail is "Chubb ELA pricing rationale</p> <p>2 from Russ and Larry," the quote pursuit team, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And what do you mean by "the pursuit team"?</p> <p>5 A. The people who are driving the conversation, the sales</p> <p>6 team.</p> <p>7 Q. The conversation with Chubb?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall what this e-mail related to, generally?</p> <p>10 A. Yes. Mark Layden was going to have a personal</p> <p>11 conversation with Folz and Bolen and negotiate the close --</p> <p>12 closure.</p> <p>13 Q. Of the enterprise aspect of the license agreement?</p> <p>14 A. What was remaining for December, yes, for a December</p> <p>15 close.</p> <p>16 Q. So was your purpose in writing this e-mail to update</p> <p>17 them relating to the current status of negotiations?</p> <p>18 A. That's correct.</p> <p>19 Q. At this point on December 12th, the ELA that was being</p> <p>20 negotiated was a global ELA, correct?</p> <p>21 A. I don't know the answer to that. I don't see that.</p> <p>22 Q. Take a look at the back of Exhibit 113, the second page</p> <p>23 of the e-mail. In the third paragraph on that page, you</p> <p>24 say, "Again, we're at 1.05 million for global ELA plus 50K</p> <p>25 for unlimited seats."</p>



<p>1 UNITED STATES DISTRICT COURT 2 DISTRICT OF MINNESOTA</p> <p>3 ----- 4 Fair Isaac Corporation, ) File No. 16-cv-1054(DTS) 5 a Delaware Corporation, ) 6 Plaintiff, ) 7 v. ) 8 Federal Insurance Company, ) Courtroom 14W 9 an Indiana corporation, ) Minneapolis, Minnesota 10 and ACE American Insurance ) Monday, February 27, 2023 11 Company, a Pennsylvania ) 9:00 a.m. 12 Corporation, ) 13 Defendants. ) 14 -----</p> <p>15 BEFORE THE HONORABLE DAVID T. SCHULTZ 16 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE</p> <p>17 (JURY TRIAL PROCEEDINGS - VOLUME VI)</p> <p>18 19 20 21 22 Proceedings recorded by mechanical stenography; 23 transcript produced by computer. 24 * * * 25</p>	<p>1 INDEX 2 PAGE</p> <p>3 HENRY MIROLYUZ 971 4 Examination By Mr. Hinderaker</p> <p>5 CLAUDIO GHISLANZONI 1046 6 Cross-Examination By Mr. Hinderaker 7 Direct Examination By Ms. Godesky 1131 8 Recross-Examination By Mr. Hinderaker 1161 9 Redirect Examination By Ms. Godesky 1170 10 Recross-Examination By Mr. Hinderaker 1171</p> <p>11 JOHN TAYLOR 12 Examination By Mr. Hinderaker 1174</p> <p>13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>10 11 <u>PLAINTIFF'S EXHIBITS</u> REC'D 12 517 1080 13 518 1082 14 526 1096 15 1002 1088 16 1005 1088 17 1007 1088 18 1008 1088</p> <p>19 20 21 22 23 24 25</p> <p>15 16 <u>DEFENDANTS' EXHIBITS</u> REC'D 17 39 1140</p>
<p>1 <u>APPEARANCES:</u></p> <p>2 For Plaintiff: MERCHANT &amp; GOULD P.C. 3 BY: ALLEN W. HINDERAKER 4 HEATHER J. KLIEBENSTEIN 5 PAIGE S. STRADLEY 6 MICHAEL A. ERBELE 7 JOSEPH W. DUBIS 8 GABRIELLE L. KIEFER 9 150 South Fifth Street, #2200 10 Minneapolis, Minnesota 55402</p> <p>11 For Defendants: FREDRIKSON &amp; BYRON 12 BY: TERRENCE J. FLEMING 13 LEAH C. JANUS 14 CHRISTOPHER D. PHAM 15 RYAN C. YOUNG 16 PANHIA VANG 17 200 South Sixth Street, #4000 18 Minneapolis, Minnesota 55402</p> <p>19 O'MELVENY &amp; MYERS LLP 20 BY: LEAH GODESKY 21 ANTON METLITSKY 22 DARYN E. RUSH 23 ROXANA GUIDERO 24 Times Square Tower 25 7 Times Square New York, New York 10036</p> <p>1 Court Reporters: RENEE A. ROGGE, RMR-CRR 2 KRISTINE MOUSSEAU, CRR-RPR 3 MARIA V. WEINBECK, RMR-FCRR 4 PAULA RICHTER, RMR-CRR-CRC 5 United States District Courthouse 6 300 South Fourth Street, Box 1005 7 Minneapolis, Minnesota 55415</p> <p>8 * * *</p>	<p>1 9:00 A.M.</p> <p>2 3 (In open court without the Jury present.) 4 THE COURT: Please be seated. Good morning, 5 everyone. 6 The record should reflect that we are in the 7 courtroom outside the presence of the jury. As I understand 8 it, there is a couple of issues, at least one, that we need 9 to take up now before we begin with testimony and that I 10 think is the interrogatory answer. 11 Is that correct, Mr. Hinderaker? 12 MR. HINDERAKER: Yes, Your Honor. 13 THE COURT: Okay. And tell me what it is you plan 14 to put in and, if it's not obvious, why it's relevant. 15 MR. HINDERAKER: This is a copy of it. 16 THE COURT: Yeah, I've looked at it. Go ahead and 17 bring it up. Well, what are you proposing to do with this 18 exactly? 19 MR. HINDERAKER: Well, mister -- well, I guess it 20 comes up in Mirolyuz's deposition because Mr. Mirolyuz is 21 the one who verified it. 22 THE COURT: Right. 23 MR. HINDERAKER: During the course of the 24 deposition we had an unsigned copy, and during the 25 deposition I asked Mr. Mirolyuz, and he did verify it in the</p>



<p style="text-align: right;"><b>1021</b></p> <p>1 <b>ARP 2, the purpose of this document is to market the</b></p> <p>2 <b>business rules technology -- business rules across the</b></p> <p>3 <b>enterprise, across the Chubb.</b></p> <p>4 Q. And that was the purpose. And what was the goal to be</p> <p>5 achieved from that purpose?</p> <p>6 A. <b>We thought that using the business rules can bring the</b></p> <p>7 <b>benefits to the IT teams across the Chubb. So the goal is</b></p> <p>8 <b>as they become familiar, they would start implementing or</b></p> <p>9 <b>using the business rules technology that is making their</b></p> <p>10 <b>life simpler.</b></p> <p>11 Q. Okay. So the -- was there a benefit to -- separate from</p> <p>12 the simpler life of the underwriters, was there a benefit to</p> <p>13 the business that you were advancing?</p> <p>14 A. <b>Benefit would be, from my view, would be quicker</b></p> <p>15 <b>turnaround of the projects; thus, we can deploy the business</b></p> <p>16 <b>requests significantly quicker, as was demonstrated by the</b></p> <p>17 <b>ARP 1 project.</b></p> <p>18 Q. And from your point of view, what was the benefit to the</p> <p>19 business when you were able to do that?</p> <p>20 A. <b>Again, the changes or business changes can be deployed;</b></p> <p>21 <b>thus, whatever benefit is intended for that particular</b></p> <p>22 <b>implementation can be achieved significantly faster.</b></p> <p>23 Q. Does that mean then that new policies can be put to</p> <p>24 market faster?</p> <p>25 A. <b>Not necessarily, but could be more precise guidance or</b></p>	<p style="text-align: right;"><b>1023</b></p> <p>1 A. <b>Okay.</b></p> <p>2 Q. And you wrote Introduction and Scope 1.1?</p> <p>3 A. <b>Correct.</b></p> <p>4 Q. All right. So you start that with, "The purpose of this</p> <p>5 document is to illustrate." And then tell me what you mean</p> <p>6 by, "Such as increasing agility to implement the business</p> <p>7 change and reducing time to market the new products and</p> <p>8 services."</p> <p>9 First paragraph.</p> <p>10 A. <b>So we believed at the time of --</b></p> <p>11 COURT REPORTER: I lost you.</p> <p>12 THE WITNESS: Sorry. I believed at the time I</p> <p>13 wrote this document that implementation of the business</p> <p>14 rules technology --</p> <p>15 MR. FLEMING: I'm sorry. I thought you were</p> <p>16 saying 40.</p> <p>17 BY MR. HINDERAKER:</p> <p>18 Q. Let's try again.</p> <p>19 A. <b>Yeah. So at the moment of writing this document, I</b></p> <p>20 <b>believed that use of the business rules technology would</b></p> <p>21 <b>enable IT team to deploy any business request to production</b></p> <p>22 <b>or to come to market significantly faster as compared with</b></p> <p>23 <b>traditional technologies employed at Chubb at a that point</b></p> <p>24 <b>in time.</b></p> <p>25 Q. Say what?</p>
<p style="text-align: right;"><b>1022</b></p> <p>1 <b>more precise scoring for that particular example. It</b></p> <p>2 <b>doesn't necessarily impact the speed or increase on the</b></p> <p>3 <b>business.</b></p> <p>4 Q. Let's back up a second. So the reason for having Blaze</p> <p>5 Advisor is that it has an ultimate benefit for the business.</p> <p>6 A. <b>Correct.</b></p> <p>7 Q. Correct?</p> <p>8 A. <b>Ultimately, yes.</b></p> <p>9 Q. Yes, ultimately. And one of the benefits of, I think</p> <p>10 that you just said, is that it makes people lives easier?</p> <p>11 A. <b>Correct.</b></p> <p>12 Q. Correct? And the people that you're referencing are the</p> <p>13 underwriters?</p> <p>14 A. <b>No. I'm referencing the IT teams because they're</b></p> <p>15 <b>ultimately responsible. Again, I'm talking -- my role was</b></p> <p>16 <b>from the IT perspective.</b></p> <p>17 Q. Okay.</p> <p>18 A. <b>I would not be able to speak for any business benefits</b></p> <p>19 <b>achieved through the use of the Blaze Advisor technology or</b></p> <p>20 <b>business rules technology. I do speak around the</b></p> <p>21 <b>benefits -- that's what I speak in this document, is where</b></p> <p>22 <b>the business rules technology could benefit from the IT</b></p> <p>23 <b>point of view.</b></p> <p>24 Q. Anyway, that's what I said. 4 of 42 and Bates number</p> <p>25 0004.</p>	<p style="text-align: right;"><b>1024</b></p> <p>1 A. <b>It increases the agility of the project and increases --</b></p> <p>2 <b>and reducing time to market.</b></p> <p>3 Q. It increases the agility of the business?</p> <p>4 A. <b>Agility of implementation. Again, as you can see</b></p> <p>5 <b>specifically here, it is agility to implement to business</b></p> <p>6 <b>changes.</b></p> <p>7 <b>So I'm not speaking to the business benefit for</b></p> <p>8 <b>this. This specifically says if I have a request from the</b></p> <p>9 <b>business to implement particular change, I can deploy it, I</b></p> <p>10 <b>can implement it significantly faster and deploy it</b></p> <p>11 <b>significantly faster for business to use.</b></p> <p>12 Q. As a consequence, as you say, that reduces the time to</p> <p>13 market for new products and services, correct?</p> <p>14 A. <b>If it's implemented in the Blaze Advisor. Again, big</b></p> <p>15 <b>disclaimer.</b></p> <p>16 Q. And you just, you just, you just said the phrase, "if</p> <p>17 implemented in Blaze Advisor."</p> <p>18 And I want to turn you to the next page. And you</p> <p>19 have a heading, "What are business rules?" And then you</p> <p>20 have a description, you know, four paragraphs down,</p> <p>21 "Traditionally embedded" -- "traditionally embedded inside</p> <p>22 code." And then you say -- and then you have the next</p> <p>23 paragraph, "Externalizing the business rules to be a</p> <p>24 structured decision management."</p> <p>25 Is that what you're meaning by if Blaze Advisor is</p>

<p style="text-align: right;"><b>1101</b></p> <p>1 A. <b>Yes.</b></p> <p>2 Q. All right. And this should not be published yet.</p> <p>3 Again, the title of this is Declaration of Zorica</p> <p>4 Todorovic. Have I read that right?</p> <p>5 A. <b>Yes.</b></p> <p>6 Q. And then if you go to the last page, she declares</p> <p>7 independently of perjury that the foregoing is true and</p> <p>8 correct to the best of her knowledge. Do you see that?</p> <p>9 A. <b>I see that.</b></p> <p>10 Q. And you see a signature?</p> <p>11 A. <b>I see Zorica Todorovic and a signature.</b></p> <p>12 Q. Okay. And then you see in the top line case, and it has</p> <p>13 numbers of a case and a docket number and a filing date.</p> <p>14 Do you see that?</p> <p>15 A. <b>I see that.</b></p> <p>16 MR. HINDERAKER: Your Honor, I move the admission</p> <p>17 of the Declaration of Zorica Todorovic as an admission, also</p> <p>18 as one that was adopted by the defendants because it was</p> <p>19 filed with the court in the context of the court proceedings</p> <p>20 in this case.</p> <p>21 MS. GODESKY: Objection, Your Honor. Hearsay. No</p> <p>22 foundation.</p> <p>23 THE COURT: Let's approach.</p> <p>24 (Sidebar discussion)</p> <p>25 THE COURT: It's a sworn statement under oath</p>	<p style="text-align: right;"><b>1103</b></p> <p>1 Evidence 801(d)(2)(B) as a party admission.</p> <p>2 801 (d)(2)(B) provides in part that the statement</p> <p>3 is not hearsay if the statement is offered against a party</p> <p>4 and is a statement of which the party has manifested an</p> <p>5 adoption on belief or belief in its truth.</p> <p>6 Southern District of New York. Defendants do not</p> <p>7 contest the admissibility of statements by, nor could they,</p> <p>8 the declarations from which these excerpts were taken were</p> <p>9 submitted by defendants at summary judgment. When</p> <p>10 defendants submit these declarations at summary judgment,</p> <p>11 they manifested that they adapted or believed to be true the</p> <p>12 statements contained in these declarations.</p> <p>13 And that's the Southern District of New York 2012.</p> <p>14 MS. GODESKY: Your Honor, I would like an</p> <p>15 opportunity to look at that case law. I think at a minimum</p> <p>16 this isn't something that needs to be resolved with</p> <p>17 Mr. Ghizlanzoni. This is not his statement.</p> <p>18 And I'm not even sure where Mr. Hinderaker is</p> <p>19 going.</p> <p>20 MR. HINDERAKER: I would explain it, if you wish.</p> <p>21 THE COURT: Please.</p> <p>22 MR. HINDERAKER: So we have a party admission and</p> <p>23 what her declaration does is flush out more details about</p> <p>24 the AppCentrica/DWS transfer of knowledge between Canada and</p> <p>25 Australia with respect to this Evolution application.</p>
<p style="text-align: right;"><b>1102</b></p> <p>1 offered by Federal during the course of litigation. So why</p> <p>2 is it hearsay?</p> <p>3 MS. GODESKY: Your Honor, this would be completely</p> <p>4 unprecedented. If you could get documents in this way,</p> <p>5 every declaration and expert report that a party cites in</p> <p>6 support of or in opposition to a summary judgment filing</p> <p>7 could then be admitted at trial.</p> <p>8 MR. HINDERAKER: Actually, not expert reports.</p> <p>9 Just declarations under oath.</p> <p>10 MS. GODESKY: Some expert reports are sworn.</p> <p>11 THE COURT: No.</p> <p>12 MS. GODESKY: But this is a declaration of a</p> <p>13 witness who is not here. They had every opportunity to</p> <p>14 depose, and the idea that you can put in a sworn declaration</p> <p>15 of a witness that is not present in trial, there's</p> <p>16 absolutely no authority for that at all.</p> <p>17 MR. HINDERAKER: May I have a moment, and I will</p> <p>18 get some?</p> <p>19 THE COURT: Sure.</p> <p>20 MR. HINDERAKER: All right.</p> <p>21 (Approaches counsel table and returns)</p> <p>22 MR. HINDERAKER: One case I have comes out of</p> <p>23 bankruptcy court. The objections to the admission of this</p> <p>24 declaration is hearsay, is without merit. This declaration</p> <p>25 is expressly excluded from hearsay by Federal Rule of</p>	<p style="text-align: right;"><b>1104</b></p> <p>1 So we have more context for the authentication of</p> <p>2 these documents of which he admittedly is not a party to,</p> <p>3 but the authentication is relatively low, and it is to the</p> <p>4 point, is this what it purports to be. And so we have a</p> <p>5 sworn declaration detailing a little bit about this project</p> <p>6 that makes the authenticity of these other documents and</p> <p>7 emails more authentic, I guess.</p> <p>8 MS. GODESKY: So I don't have an authenticity</p> <p>9 objection.</p> <p>10 THE COURT: I know your objection is foundation</p> <p>11 and hearsay.</p> <p>12 MS. GODESKY: Exactly. I would like more time to</p> <p>13 consider the hearsay issue. But certainly on foundation</p> <p>14 under the rule that FICO argued for and this court adopted,</p> <p>15 Mr. Ghizlanzoni would not be the right witness to use this</p> <p>16 with anyway, because as you look at the recitation of facts</p> <p>17 in this declaration, paragraph 5 Ms. Zorica is talking about</p> <p>18 events in 2015.</p> <p>19 That's the time period that she was addressing.</p> <p>20 She was at ACE and this is --</p> <p>21 MR. HINDERAKER: I think we're confusing the</p> <p>22 foundation question. I don't quarrel with the fact that</p> <p>23 Mr. Ghizlanzoni doesn't have foundation about this. But</p> <p>24 what I was saying is, when this is out and the court's aware</p> <p>25 of it and you look at the documents that I am showing him</p>

<p style="text-align: right;"><b>1153</b></p> <p>1 A. <b>Yes.</b></p> <p>2 Q. Based on your understanding of the legacy Chubb IT</p> <p>3 infrastructure, was Blaze used before -- was Blaze used in</p> <p>4 the Evolution application in Canada?</p> <p>5 A. <b>So Evolution Canada was making use of Blaze as a</b></p> <p>6 <b>software, yes. That's correct.</b></p> <p>7 Q. Was Blaze used after the acquisition in the Evolution</p> <p>8 application in Australia?</p> <p>9 A. <b>No. We utilized ODM for Evolution in Australia.</b></p> <p>10 Q. Were there conversations at Chubb in spring 2016 after</p> <p>11 the acquisition about potentially adding Blaze to Evolution</p> <p>12 Australia?</p> <p>13 A. <b>The original intention was to take the entire technology</b></p> <p>14 <b>stack, meaning all the technology of Evolution Canada, and</b></p> <p>15 <b>use it in Australia. That was the original intention.</b></p> <p>16 Q. Did that happen?</p> <p>17 A. <b>No.</b></p> <p>18 Q. Why not?</p> <p>19 A. <b>Because of the dispute I had to instruct Russ Hodey and</b></p> <p>20 <b>the team in Australia to adopt ODM, informing them that we</b></p> <p>21 <b>needed to -- we couldn't have adopted Blaze because of the</b></p> <p>22 <b>dispute.</b></p> <p>23 Q. Now, Mr. Ghislanzoni, there's been a lot of references</p> <p>24 to these ChEAR spreadsheets during this trial. Do you have</p> <p>25 a general familiarity with what they are?</p>	<p style="text-align: right;"><b>1155</b></p> <p>1 Q. Okay. And then if we can look at the whole chart again.</p> <p>2 You were also asked questions about the number of</p> <p>3 rules and transactions that were processed by Blaze,</p> <p>4 according to this chart, right?</p> <p>5 A. <b>Yes.</b></p> <p>6 Q. Based on your decades of experience as an architect at</p> <p>7 insurance companies, could approximately the same number of</p> <p>8 rules and transactions have been processed by rules that</p> <p>9 were coded by software engineers?</p> <p>10 A. <b>Yes.</b></p> <p>11 Q. How about by rules that were run by other software</p> <p>12 products like ODM or Red Hat Decision Manager?</p> <p>13 A. <b>Yes.</b></p> <p>14 Q. We can take that down. Thank you, Vanessa.</p> <p>15 So you testified earlier that by 2020 Blaze had</p> <p>16 been removed from the last computer application at Chubb,</p> <p>17 correct?</p> <p>18 A. <b>Correct.</b></p> <p>19 Q. Why did you decide to remove Blaze from all of Chubb's</p> <p>20 systems in 2019 and is 2020?</p> <p>21 A. <b>Yeah, towards the end of 2018, beginning of 2019, it was</b></p> <p>22 <b>clear that the, because of the dispute, our relationship was</b></p> <p>23 <b>heavily damaged, and as such it was representing a</b></p> <p>24 <b>significant risk to the enterprise.</b></p> <p>25 So we were forced to make a difficult decision to</p>
<p style="text-align: right;"><b>1154</b></p> <p>1 A. <b>Yes. They used to be used. No longer exist.</b></p> <p>2 Q. As the chief enterprise architect of the combined</p> <p>3 organization, would you ever rely on a ChEAR spreadsheet to</p> <p>4 tell you definitively what technology is in use and what</p> <p>5 technology is not?</p> <p>6 A. <b>No. The purpose of the ChEAR spreadsheet was to have a,</b></p> <p>7 <b>a collection of applications that were in the environment,</b></p> <p>8 <b>but also application that were potentially going to be</b></p> <p>9 <b>created.</b></p> <p>10 Q. Okay. I'd like to put up Plaintiff's Exhibit 517, if we</p> <p>11 could. Thank you.</p> <p>12 Do you remember looking at this document,</p> <p>13 Mr. Ghislanzoni?</p> <p>14 A. <b>Yes.</b></p> <p>15 Q. Do you see how there's a column that says number of</p> <p>16 users, and then it's divided into business and technical?</p> <p>17 A. <b>Yes.</b></p> <p>18 Q. And then there's counts of the number of business users,</p> <p>19 right?</p> <p>20 A. <b>Yes.</b></p> <p>21 Q. Is that a count of the number of business users who are</p> <p>22 using applications using Blaze, or is it a count of the</p> <p>23 number of people who are actually going in and using Blaze,</p> <p>24 the software product?</p> <p>25 A. <b>It is the users of the application.</b></p>	<p style="text-align: right;"><b>1156</b></p> <p>1 recreate all of those rules that we had spent a significant</p> <p>2 amount of dollars and time to create in Blaze, to recreate</p> <p>3 them in another technology.</p> <p>4 Q. Excuse me. How long did it take to remove from a</p> <p>5 software program like CSI Express the Blaze rules?</p> <p>6 A. <b>It took months. And the reason why it's taking this</b></p> <p>7 <b>long is, you saw the numbers, thousands of rules, complex.</b></p> <p>8 <b>So think in terms of every rule has to be recreated in a</b></p> <p>9 <b>different software product, and we chose Drools.</b></p> <p>10 All of these rules need to be tested. The</p> <p>11 behavior of the application has to be validated. So we</p> <p>12 needed to be certain that the application with the migrated</p> <p>13 rules was behaving in exact same way as before, when it was</p> <p>14 running Blaze.</p> <p>15 Once all of that is done, then you can go live.</p> <p>16 All of these efforts takes many weeks.</p> <p>17 Q. As the chief architect at Chubb, do complaints and</p> <p>18 concerns about the IT infrastructure regularly make their</p> <p>19 way to you?</p> <p>20 A. <b>Yes.</b></p> <p>21 Q. Since you removed Blaze from all the computer</p> <p>22 applications at Chubb, has anyone ever raised with you any</p> <p>23 complaints or concerns about speed or efficiency?</p> <p>24 A. <b>No, no complaints.</b></p> <p>25 Q. Has anyone raised with you any complaints or concerns</p>

<p style="text-align: right;"><b>1157</b></p> <p>1 about technology problems generally in those computer 2 applications? 3 A. <b>No.</b> 4 Q. Now, does Chubb currently have a preferred rules 5 software product that it's using? 6 A. <b>That's correct.</b> 7 Q. Which one? 8 A. <b>It's called Drools and most specific Red Hat Decision 9 Manager, which is a distribution of Drools. What it means 10 is Red Hat, which is also contributor to the open source, 11 decided to provide a supported version, which means they 12 download the open source. They test it. They check for 13 vulnerabilities, risks.</b> 14 They check the performance, and then they provide 15 it to a company like Chubb at a price and so that the 16 company like Chubb can be certain that the product is tested 17 and is secure. But also if there was a problem with the 18 software, Red Hat, as a vendor, would be there to support 19 us. 20 Q. Why did Chubb switch from IBM's ODM product as the 21 preferred vendor to Drools distributed by Red Hat? 22 A. <b>It's linked to this IT strategy that we formulate in 23 2018. In 2018 we decided that it was the right time to 24 embrace open source fully, and therefore we looked at 25 different technologies that were available in the open</b></p>	<p style="text-align: right;"><b>1159</b></p> <p>1 paid for the Drools license? 2 A. <b>Yes. I remember we paid for the first year was just 3 over \$400,000. And then we did a contract, a three-year 4 contract after that, which was just over a million. In 5 total, in four years we spent around \$1.5 million.</b> 6 Q. Approximately, how many computer applications are used 7 today at the combined ACE/Chubb entity? 8 A. <b>Using Red Hat?</b> 9 Q. No. Generally how many are running? 10 A. <b>Oh, we have around 3,000 applications now.</b> 11 Q. And do they all run rules in one way or another? 12 A. <b>They all have rules.</b> 13 Q. And how many of those approximately 3,000 applications 14 are using a rules-based software product like ODM or Drools? 15 A. <b>Oh, less than one percent.</b> 16 Q. And how are you rules run in all of the other 17 applications? 18 A. <b>It's -- the rules are in, written as using a programming 19 language.</b> 20 Q. By the software engineers? 21 A. <b>By the software engineers.</b> 22 Q. Can you think of an example where Blaze was replaced in 23 a computer application with code written by software 24 engineers? 25 A. <b>Well, Evolution is a good one, Canada, because when we</b></p>
<p style="text-align: right;"><b>1158</b></p> <p>1 <b>source community. And Drools was a good one for us to adopt 2 at that time.</b> 3 Q. Were you involved in discussions regarding the efforts 4 to obtain the Red Hat license for the combined ACE/Chubb 5 entity? 6 A. <b>I was.</b> 7 Q. How did you feel at the time about having to find a new 8 rules software license for the computer applications that 9 were running Blaze at the time? 10 A. <b>I wasn't happy. Neither of my colleagues were happy 11 because we were forced to do it.</b> 12 Q. As the chief enterprise architect, do your 13 responsibilities include overseeing budget concerns relating 14 to software investments? 15 A. <b>Yes.</b> 16 Q. When you set out to obtain a replacement rules software 17 license, did you have a dollar range in mind for what you 18 would be willing to pay for the replacement rules software 19 from Red Hat? 20 A. <b>Well, at the time I thought that possibly having a 21 budget of a million dollar would have been appropriate, 22 given the usage of rules at Chubb.</b> 23 Q. Now is Chubb currently paying to access Drools? 24 A. <b>Yes, we are paying Red Hat.</b> 25 Q. And are you familiar with the amounts that Chubb has</p>	<p style="text-align: right;"><b>1160</b></p> <p>1 <b>decided to -- we were forced to remove Blaze, we coded the 2 rules using programming language. There was an initial 3 component already in the application that software engineers 4 had developed. So we extended that component that was 5 developed by our software engineers.</b> 6 Q. Are you talking about Evolution in Canada? 7 A. <b>Evolution Canada, yes.</b> 8 Q. Thank you. The jury heard Mr. Wachs of FICO testify by 9 video on Friday that someone at Chubb told him that Blaze 10 allowed Chubb to do in one afternoon something that would 11 normally take months and hundreds of thousands of dollars if 12 done by IT. 13 Do you remember hearing that testimony? 14 A. <b>I do.</b> 15 Q. Based on your experience as the chief architect at two 16 insurance organizations, did you ever observe Blaze allowing 17 Chubb to do in one afternoon what otherwise would have taken 18 months and hundreds of thousands of dollars to do? 19 A. <b>Never experienced that.</b> 20 Q. Did anyone at Chubb ever suggest to you that Blaze had 21 so dramatically improved their ability to run rules in 22 computer applications? 23 A. <b>No.</b> 24 Q. Now, the jury has also heard some testimony about the 25 concept of rate of adoption of technology. What does that</p>

<p style="text-align: right;"><b>1161</b></p> <p>1 refer to?</p> <p>2 A. <b>So rate of adoption is, of technology, it describes a</b></p> <p>3 <b>scenario where technology adoption is expanding. So it's,</b></p> <p>4 <b>the utilization, it's growing. And it's growing, and it can</b></p> <p>5 <b>grow at different speeds obviously.</b></p> <p>6 Q. From the perspective of a technology architect, if a</p> <p>7 rules engine could allow an insurance company to do in an</p> <p>8 afternoon what it would normally take months to do, what</p> <p>9 would you expect to see in terms of the rate of adoption?</p> <p>10 A. <b>To grow pretty fast, if that was possible.</b></p> <p>11 Q. And what's your understanding of the rate of adoption of</p> <p>12 rules software at the combined ACE/Chubb entity?</p> <p>13 Approximately what percentage of the computer applications</p> <p>14 are running rules?</p> <p>15 A. <b>Using a rules engine?</b></p> <p>16 Q. Yes.</p> <p>17 A. <b>Less than one percent, so very low rate of adoption.</b></p> <p>18 MS. GODESKY: Thank you. I have no further</p> <p>19 questions right now.</p> <p>20 THE COURT: Mr. Hinderaker, any recross?</p> <p>21 MR. HINDERAKER: Yes, please. Thank you.</p> <p>22 <u>RECROSS-EXAMINATION</u></p> <p>23 BY MR. HINDERAKER:</p> <p>24 Q. Hello again.</p> <p>25 A. <b>Hello.</b></p>	<p style="text-align: right;"><b>1163</b></p> <p>1 Q. That was so hard to get out, I don't know.</p> <p>2 My point was that given your roles, you do not</p> <p>3 have day-to-day communications with the people who are</p> <p>4 responsible for the applications that contained Blaze</p> <p>5 Advisor and are used in connection with selling insurance</p> <p>6 for the specialty insurance line of the former Chubb</p> <p>7 Corporation or for the commercial insurance line of the</p> <p>8 former Chubb Corporation?</p> <p>9 A. <b>We don't have Blaze Advisor in our landscape anymore.</b></p> <p>10 Q. Now I'm speaking of the time frame 2016 through 2020.</p> <p>11 A. <b>Okay. Well, I had pretty frequent interaction with my</b></p> <p>12 <b>team in the global organization as part of my role.</b></p> <p>13 Q. Understood, with your team in the global organization.</p> <p>14 Does your team include Henry Mirolyuz?</p> <p>15 A. <b>When Henry was here, yes, he was part of my --</b></p> <p>16 Q. And did you have frequent conversations with Henry</p> <p>17 Mirolyuz?</p> <p>18 A. <b>I had a number of communicates with Henry Mirolyuz.</b></p> <p>19 Q. You're aware from being in the courtroom that in 2006,</p> <p>20 amongst all the rules management software vendors available</p> <p>21 at the time, Chubb &amp; Son chose Blaze Advisor to be the rules</p> <p>22 management technology, correct?</p> <p>23 A. <b>Yes, I'm aware.</b></p> <p>24 Q. And then in 2016 you started your own review, after the</p> <p>25 merger, and in the beginning stages with that TDA review,</p>
<p style="text-align: right;"><b>1162</b></p> <p>1 Q. Before the acquisition in 2016 you were with ACE</p> <p>2 Limited, correct?</p> <p>3 A. <b>Yes.</b></p> <p>4 Q. And your responsibilities were international?</p> <p>5 A. <b>International.</b></p> <p>6 Q. And your international responsibilities did not include</p> <p>7 the United States.</p> <p>8 A. <b>That's correct.</b></p> <p>9 Q. And for the period of time from 20 -- from 2006 to the</p> <p>10 acquisition, is it fair to say that you had no conversations</p> <p>11 with anybody at Chubb Limited, whether it was Mr. Sullivan,</p> <p>12 Owen Williams, Henry Mirolyuz, about their experience using</p> <p>13 Blaze Advisor in connection with selling specialty</p> <p>14 insurance?</p> <p>15 A. <b>I did not know those individuals.</b></p> <p>16 Q. That's my point. And in 2017, then, your</p> <p>17 responsibilities became global and -- but somebody else,</p> <p>18 Mr. Pandey, is responsible for North America.</p> <p>19 A. <b>In my team.</b></p> <p>20 Q. Yes. So you don't have day-to-day contact with the</p> <p>21 people from either legacy Chubb -- well with legacy Chubb or</p> <p>22 combined Chubb who are responsible for maintaining and using</p> <p>23 and operating the applications that contain Blaze Advisor in</p> <p>24 connection with selling insurance, correct?</p> <p>25 A. <b>Would you, would you mind asking the question again?</b></p>	<p style="text-align: right;"><b>1164</b></p> <p>1 although you disagreed, I guess, with Mr. Tonkin's</p> <p>2 conclusions, in that review as a work-in-progress in April</p> <p>3 Blaze Advisor was identified as the superior technology over</p> <p>4 ODM.</p> <p>5 A. <b>They had the highest score.</b></p> <p>6 Q. And then as your decision processes continued, you</p> <p>7 started to look at how to position the entire enterprise</p> <p>8 from the point of view of technology, correct?</p> <p>9 A. <b>Yes. You are referring to the, defining the new</b></p> <p>10 <b>technology standards for the new Chubb.</b></p> <p>11 Q. Right. And then that led you to the conclusion to adopt</p> <p>12 an open source technology as an enterprise-wide standard.</p> <p>13 A. <b>That happened after we completed that effort.</b></p> <p>14 Q. Of course. After you completed the effort, one of the</p> <p>15 conclusions from the effort was to adopt as an</p> <p>16 enterprise-wide strategy an open source platform technology?</p> <p>17 A. <b>Yeah. In 2019 we made that decision.</b></p> <p>18 Q. Yes, I agree. And so when you then went to Drools, the</p> <p>19 decision to go to Drools was driven by the earlier decision</p> <p>20 to go to open source.</p> <p>21 A. <b>It was contextual.</b></p> <p>22 Q. Yes. In other words, at that point once the decision</p> <p>23 was open source, the alternatives of vendors like Blaze</p> <p>24 Advisor or Duck Creek or Pegasus or ODM, all of those</p> <p>25 third-party vendor choices are off the table because</p>

<p>1 UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA</p> <p>2 -----</p> <p>3 Fair Isaac Corporation, ) 4 a Delaware Corporation, ) File No. 16-cv-1054(DTS) 5 Plaintiff, ) 6 v. ) 7 Federal Insurance Company, ) Courtroom 14W 8 an Indiana corporation, ) Minneapolis, Minnesota 9 and ACE American Insurance ) Wednesday February 15 2023 Company, a Pennsylvania ) 8:50 a.m. Corporation, ) 10 Defendants. ) 11 -----</p> <p>12</p> <p>13</p> <p>14 BEFORE THE HONORABLE DAVID T. SCHULTZ UNITED STATES DISTRICT COURT MAGISTRATE JUDGE</p> <p>15</p> <p>16 (JURY TRIAL PROCEEDINGS - VOLUME VII)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 Proceedings recorded by mechanical stenography; transcript 23 produced by computer. 24 * * * 25</p>	<p>1198</p> <p>1 <b><u>I N D E X</u></b></p> <p>2 <u>PAGE</u></p> <p>3 <b>JOHN TAYLOR</b></p> <p>4 Via Deposition By Mr. Hinderaker 1219</p> <p>5</p> <p>6 <b>NEIL J. ZOLTOWSKI</b></p> <p>7 DIRECT EXAMINATION BY MS. KLIEBENSTEIN 1246</p> <p>8 CROSS-EXAMINATION BY MS. GODESKY 1334</p> <p>9 REDIRECT EXAMINATION BY MS. KLIEBENSTEIN 1350</p> <p>10 RECROSS-EXAMINATION BY MS. GODESKY 1351</p> <p>11 <b>RANDOLPH BICKLEY WHITENER</b></p> <p>12 DIRECT EXAMINATION BY MR. HINDERAKER 1353</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22 <u>PLAINTIFF'S</u></p> <p>23 857 <u>REC'D</u></p> <p>24 1361</p> <p>25</p>
<p>1199</p> <p>1 <b><u>APPEARANCES:</u></b></p> <p>2 For Plaintiff: MERCHANT &amp; GOULD P.C. BY: ALLEN W. HINDERAKER 3 HEATHER J. KLIEBENSTEIN 4 PAIGE S. STRADLEY MICHAEL A. ERBELE JOSEPH W. DUBIS 5 GABRIELLE L. KIEFER 150 South Fifth Street, #2200 6 Minneapolis, Minnesota 55402</p> <p>7 For Defendants: FREDRIKSON &amp; BYRON BY: TERRENCE J. FLEMING 8 LEAH C. JANUS CHRISTOPHER D. PHAM 9 RYAN C. YOUNG PANHIA VANG 200 South Sixth Street, #4000 10 Minneapolis, Minnesota 55402</p> <p>11 O'MELVENY &amp; MYERS LLP 12 BY: LEAH GODESKY ANTON METLITSKY 13 DARYN E. RUSH ROXANA GUIDERO 14 Times Square Tower 7 Times Square 15 New York, New York 10036</p> <p>16 Court Reporters: RENEE A. ROGGE, RMR-CRR KRISTINE MOUSSEAU, CRR-RPR 17 MARIA V. WEINBECK, RMR-FCRR PAULA RICHTER, RMR-CRR-CRC 18 United States District Courthouse 300 South Fourth Street, Box 1005 19 Minneapolis, Minnesota 55415</p> <p>20 * * * 21 22 23 24 25</p>	<p>1201</p> <p>1 <b>February 28, 2023</b></p> <p>2 <b>8:50 A.M.</b></p> <p>3</p> <p>4 <b>(In open court without the Jury present.)</b></p> <p>5 THE COURT: Good morning. Please be seated.</p> <p>6 All right. Good morning, everyone. We're on the</p> <p>7 record outside the presence of the jury. I understand the</p> <p>8 parties have an issue with respect to some of the</p> <p>9 interrogatory answers that are intended to come in -- into</p> <p>10 evidence today.</p> <p>11 So, Ms. Kliebenstein, or whomever on that side,</p> <p>12 come on up.</p> <p>13 MS. KLIEBENSTEIN: Thank you. Good morning, Your</p> <p>14 Honor.</p> <p>15 We have, we have three -- two and a half issues,</p> <p>16 if you will. So one of them is the interrogatories, but I</p> <p>17 think I'll start with something else first. The defendants</p> <p>18 have objected to our inclusion in Mr. Zoltowski's</p> <p>19 demonstrative of revenues associated with the Chubb</p> <p>20 Insurance Company Canada. And as we -- they say that</p> <p>21 it's -- it was decided on summary judgment, that it's not in</p> <p>22 the case anymore. But as we heard from Mr. Pandey and</p> <p>23 Mr. Mirollyuz, that application -- the application running in</p> <p>24 that entity in Canada is running out of Raleigh, North</p> <p>25 Carolina, and we have outlined the case for infringement in</p>



<p style="text-align: right;">1342</p> <p>1 amounts paid by Chubb's customers to purchase insurance</p> <p>2 policies, right?</p> <p>3 <b>A.</b> By the customers of whatever writing company that was,</p> <p>4 yes.</p> <p>5 <b>Q.</b> And you included all of the money paid by Chubb's</p> <p>6 customers to purchase policies if it -- if those policies</p> <p>7 ever ran through a computer application that included Blaze,</p> <p>8 right?</p> <p>9 <b>A.</b> If it was under one of the writing entities, yes.</p> <p>10 <b>Q.</b> Okay. So I just want to talk a little bit about what</p> <p>11 that means.</p> <p>12 So hypothetically, if you had a business in Texas</p> <p>13 that paid \$10,000 for a workers' compensation policy from</p> <p>14 Chubb, if that policy ran through the TAPS application, in</p> <p>15 2017 you would include that \$10,000 premium in your \$21</p> <p>16 billion number. Fair?</p> <p>17 <b>A.</b> Yes. That's correct.</p> <p>18 <b>Q.</b> And that's because TAPS has a Blaze as a component,</p> <p>19 right?</p> <p>20 <b>A.</b> The policy touched Blaze in some way.</p> <p>21 <b>Q.</b> And you were asked to include all premium dollars that</p> <p>22 ran through these computer applications that included Blaze,</p> <p>23 right?</p> <p>24 <b>A.</b> Well, I was asked to determine what that amount would</p> <p>25 be. And like I said, I would have looked at costs as well.</p>	<p style="text-align: right;">1344</p> <p>1 numbers to account for Blaze's role in each particular</p> <p>2 application, correct?</p> <p>3 <b>A.</b> No, I have not.</p> <p>4 <b>Q.</b> And you also haven't done anything to adjust those</p> <p>5 revenue numbers to account for the role that folks at Chubb</p> <p>6 had in coming up with the particular rules that were</p> <p>7 deployed through Blaze, right?</p> <p>8 <b>A.</b> I didn't have enough information that would allow me to</p> <p>9 quantify that.</p> <p>10 <b>Q.</b> So you did not do it, correct?</p> <p>11 <b>A.</b> I could not do it.</p> <p>12 <b>Q.</b> You did not do it?</p> <p>13 <b>A.</b> Well, could not translates to did not, then yes.</p> <p>14 <b>Q.</b> And your methodology also doesn't adjust the revenue</p> <p>15 numbers at all to account for costs that Chubb would have</p> <p>16 incurred implementing Blaze, right, like time spent training</p> <p>17 software engineers on how to use the product, correct?</p> <p>18 <b>A.</b> I didn't have the appropriate information to do so, so I</p> <p>19 did not.</p> <p>20 <b>Q.</b> And you also didn't do anything to investigate whether</p> <p>21 Blaze was successfully or efficiently functioning in these</p> <p>22 particular computer applications. It was if it's a computer</p> <p>23 application including Blaze, I'm including all the dollars,</p> <p>24 right?</p> <p>25 <b>A.</b> I'm not aware of any information related to it being not</p>
<p style="text-align: right;">1343</p> <p>1 If I had the appropriate data to deduct them, I would have.</p> <p>2 <b>Q.</b> But when you're talking about revenue, if dollars were</p> <p>3 paid for a policy that ran through an application including</p> <p>4 Blaze, you included the dollars?</p> <p>5 <b>A.</b> Yes. That's correct.</p> <p>6 <b>Q.</b> You did not do any analysis to determine specifically</p> <p>7 how Blaze was utilized in connection with particular</p> <p>8 policies, correct?</p> <p>9 <b>A.</b> I mean, other than understanding how the applications</p> <p>10 worked.</p> <p>11 <b>Q.</b> But you didn't go through and look at particular</p> <p>12 policies and figure out whether -- whatever role Blaze had</p> <p>13 with that particular purchase, right?</p> <p>14 <b>A.</b> No. I think there were hundreds of thousands of</p> <p>15 policies, no.</p> <p>16 <b>Q.</b> And you didn't do anything to adjust your written</p> <p>17 premium numbers based on Blaze's particular role in an</p> <p>18 application as compared to other technology components,</p> <p>19 correct?</p> <p>20 <b>A.</b> That's not my burden based upon the law, as I understand</p> <p>21 it.</p> <p>22 <b>Q.</b> I'm not asking you about the burden or the law. The</p> <p>23 judge is going to instruct the jury on the law.</p> <p>24 My question is whether it's correct that you</p> <p>25 haven't done anything to adjust your gross written premium</p>	<p style="text-align: right;">1345</p> <p>1 functioning correctly or any problems with it for any of the</p> <p>2 policies that I quantified gross written premiums for.</p> <p>3 <b>Q.</b> But as a damages expert, Mr. Zoltowski, you didn't sit</p> <p>4 down and conduct an investigation into how well functioning</p> <p>5 Blaze was in these particular computer applications,</p> <p>6 correct?</p> <p>7 <b>A.</b> I'm not sure I understand what you mean by "how well it</p> <p>8 was functioning."</p> <p>9 <b>Q.</b> You didn't sit down and do an investigation into how</p> <p>10 efficient Blaze was in each particular computer application.</p> <p>11 You didn't render opinions on that, correct?</p> <p>12 <b>A.</b> I would need to know what you mean by "efficient" too.</p> <p>13 I mean, the latency -- I mean, what is the --</p> <p>14 <b>Q.</b> Did you do a latency analysis, Mr. Zoltowski?</p> <p>15 <b>A.</b> There wasn't that information provided, I don't believe.</p> <p>16 <b>Q.</b> So that's a no?</p> <p>17 <b>A.</b> No. When you don't have the information to do the</p> <p>18 analysis, then you can't do the analysis.</p> <p>19 <b>Q.</b> Okay. I want to look at your slide 12, which is an</p> <p>20 example of one of these slides that talks about revenue from</p> <p>21 eight different ACE writing companies. Do you remember</p> <p>22 these slides?</p> <p>23 <b>A.</b> I do.</p> <p>24 <b>Q.</b> And you talked about ACE American, Westchester and the</p> <p>25 others, right?</p>



<p style="text-align: right;">1346</p> <p>1 <b>A.</b> Yes.</p> <p>2 <b>Q.</b> So just to be clear, the only application at Chubb that</p> <p>3 used Blaze and included revenue from ACE writing companies</p> <p>4 is CUW Inventory Management, correct?</p> <p>5 <b>A.</b> I'm sorry. Could you repeat that question?</p> <p>6 <b>Q.</b> The only application at Chubb that used Blaze and</p> <p>7 included revenue from these ACE writing companies is CUW</p> <p>8 Inventory Management, correct?</p> <p>9 <b>A.</b> The only application?</p> <p>10 <b>Q.</b> Correct.</p> <p>11 <b>A.</b> I'm not sure that's true.</p> <p>12 <b>Q.</b> Let me see if I can refresh your recollection,</p> <p>13 Mr. Zoltowski.</p> <p>14 So I handed you an excerpt from one of your expert</p> <p>15 reports, and if you look at page 30, footnote B, that might</p> <p>16 help.</p> <p>17 <b>A.</b> You said footnote B?</p> <p>18 <b>Q.</b> On page 30, yes.</p> <p>19 <b>A.</b> Yeah.</p> <p>20 <b>Q.</b> Do you see footnote B from your report, Mr. Zoltowski,</p> <p>21 reads, "The CUW application is the only application for</p> <p>22 which defendants reported gross written premium from ACE</p> <p>23 American subsidiaries."</p> <p>24 Do you see that?</p> <p>25 <b>A.</b> I do.</p>	<p style="text-align: right;">1348</p> <p>1 <b>A.</b> Yes.</p> <p>2 <b>Q.</b> And you agreed with Ms. Kliebenstein that revenue is not</p> <p>3 the same thing as profit, correct?</p> <p>4 <b>A.</b> That's correct.</p> <p>5 <b>Q.</b> And so if you want to talk about an insurance company's</p> <p>6 profit, you have to take the revenue dollars, that \$21</p> <p>7 billion, and then you have to subtract the costs and the</p> <p>8 expenses, correct?</p> <p>9 <b>A.</b> That's correct.</p> <p>10 <b>Q.</b> And costs at an insurance company, that's going to be</p> <p>11 money that goes out the door when a customer has a claim,</p> <p>12 right, and you need to pay the customer?</p> <p>13 <b>A.</b> Yes. That's correct.</p> <p>14 <b>Q.</b> Things like employee salaries?</p> <p>15 <b>A.</b> Yes.</p> <p>16 <b>Q.</b> Rent on all of your office buildings, things like that,</p> <p>17 right?</p> <p>18 <b>A.</b> Depending on if they're attributable to the premiums</p> <p>19 that are at issue here, yes.</p> <p>20 <b>Q.</b> And your \$21 billion figure doesn't include costs or</p> <p>21 expenses at all, correct?</p> <p>22 <b>A.</b> Yeah. I did not have the information to allow me to do</p> <p>23 that accurately.</p> <p>24 <b>Q.</b> And you are not here, Mr. Zoltowski, to opine that there</p> <p>25 is a nexus or a connection between Blaze and defendants'</p>
<p style="text-align: right;">1347</p> <p>1 <b>Q.</b> So does that refresh your recollection that the CUW</p> <p>2 application is the only application that shows revenue from</p> <p>3 the ACE writing companies?</p> <p>4 <b>A.</b> It does, assuming I didn't make a mistake. We typically</p> <p>5 check all of these things when we write our reports, so I</p> <p>6 would assume that's true, but I would want to check the</p> <p>7 interrogatories just to confirm.</p> <p>8 <b>Q.</b> But that's what you wrote in your report, right?</p> <p>9 <b>A.</b> Yes.</p> <p>10 <b>Q.</b> And you haven't investigated or offered opinions on the</p> <p>11 particular people at Chubb who had access to the CUW</p> <p>12 Inventory Management System, right? That's outside the</p> <p>13 scope of your opinions.</p> <p>14 <b>A.</b> I'm not sure I understand your question about "the</p> <p>15 people."</p> <p>16 <b>Q.</b> Have you done -- have you investigated, as part of your</p> <p>17 expert work in this case, Mr. Zoltowski, the particular</p> <p>18 people at Chubb who had access to CUW Inventory Management?</p> <p>19 <b>A.</b> I looked at the information available. I don't believe</p> <p>20 there was any information that would allow me to investigate</p> <p>21 those particular individuals.</p> <p>22 <b>Q.</b> So you don't know?</p> <p>23 <b>A.</b> Based on what was available, no.</p> <p>24 <b>Q.</b> Okay. So as we said, revenue is money that comes in the</p> <p>25 door at an insurance company, right?</p>	<p style="text-align: right;">1349</p> <p>1 revenue, correct?</p> <p>2 <b>A.</b> I understand there's other witnesses and information</p> <p>3 that will be doing that. I was not asked to do that.</p> <p>4 <b>Q.</b> And so that means you are not here to offer opinions on</p> <p>5 how much, if any, of this \$21 billion in revenue is actually</p> <p>6 connected to Blaze as opposed to all the other things that</p> <p>7 make Chubb Chubb, right? That's someone else.</p> <p>8 <b>A.</b> That would have been part of my analysis if there was</p> <p>9 information to do so. I did not endeavor to do so, though.</p> <p>10 <b>Q.</b> You do recognize, though, that there are plenty of</p> <p>11 tangible and intangible assets at Chubb other than Blaze</p> <p>12 that have contributed to that \$21 billion figure, correct?</p> <p>13 <b>A.</b> I've never said there were no costs associated with the</p> <p>14 gross written premiums here. I just didn't have appropriate</p> <p>15 information to do so accurately.</p> <p>16 <b>Q.</b> But you also acknowledge that there are other assets at</p> <p>17 Chubb that contribute to revenue, right, other than Blaze?</p> <p>18 <b>A.</b> I'm sure there may be other things that contribute to</p> <p>19 writing a premium, insurance premium.</p> <p>20 <b>Q.</b> And your \$21 billion figure just represents every single</p> <p>21 dollar that was paid for an insurance policy that ran</p> <p>22 through those computer applications that had Blaze in it</p> <p>23 during the relevant period, correct?</p> <p>24 <b>A.</b> Yes. That's correct.</p> <p>25 <b>Q.</b> Okay. Thank you.</p>

<p style="text-align: right;">1374</p> <p>1 MR. HINDERAKER: Maybe, Your Honor, before we get 2 to that, I can be very clear about the purpose for which his 3 testimony is being offered. 4 THE COURT: Sure. 5 MR. HINDERAKER: His purpose -- his testimony is 6 being offered to inform the jury regarding the process of 7 selling insurance, regarding the things that matter in that 8 process to selling more insurance or selling less insurance. 9 He has been engaged to -- and he has experience in 10 not only front line underwriting but corporate product 11 development, so he has knowledge with respect to those 12 things. And he has, as you heard, studied 10,000-plus pages 13 of the defendants' documents to analyze from his expertise 14 how the defendants were using -- how the defendants used 15 Blaze Advisor, in their words. 16 He is not offered a Blaze Advisor expert or as 17 somebody who with Blaze Advisor expertise connects Blaze 18 Advisor to the selling of insurance. We've heard 19 Mr. Baseman, Mr. Ivey, Mr. Baer, Mr. Marce regarding the 20 qualities or attributes that Blaze Advisor brings to the 21 industry. 22 And now we're looking it -- taking it from the 23 other side, with Mr. Whitener telling us, well, how does the 24 insurance industry work and how is insurance sold, and he 25 has experience with technology. I'm not pretending him to</p>	<p style="text-align: right;">1376</p> <p>1 The last slide, "FICO Blaze Advisor added 2 significant value to defendants' business." 3 Slide 73, "Defendants needed Blaze Advisor to sell 4 insurance in underpenetrated markets." 5 And when you look at the text of his disclosed 6 reports, the headers in the reports are Blaze Advisor's 7 Contribution to Gross Written Premium, Chubb's use of Blaze 8 Advisor Contributes to Gross Written Premium. 9 And we have an objection to Mr. Whitener 10 testifying about the value or contribution of Blaze or even 11 decision management software generally, because I would like 12 to do a voir dire of the expert and show that he has no 13 experience in that area. And so you cannot create an expert 14 by having them study in the context of litigation. 15 He needed to be retained with the expertise that's 16 required under Rule 702. 17 THE COURT: But his experience and qualifications, 18 if I'm remembering Judge Wright's order correctly, I believe 19 she said that no -- no objection was made to his experience 20 or qualifications and then denied the motion to exclude 21 based on the objections that were made. 22 Am I accurately recalling what she said? 23 MS. GODESKY: She said that it was raised in 24 reply, and so she was not going to consider it. But it is 25 absolutely not waived because you have no obligation to</p>
<p style="text-align: right;">1375</p> <p>1 be a Blaze Advisor, but he does -- he has studied the 2 defendants' use of Blaze Advisor, if that's more clear. 3 THE COURT: And I'm assuming that all of the 4 opinions you intend to elicit are the ones that were 5 disclosed in his report. 6 MR. HINDERAKER: Absolutely. 7 THE COURT: I suspect I know what I'm going to 8 hear from Ms. Godesky, and that is that you described him as 9 testifying to the value of Blaze Advisor, but maybe I'll 10 hear something else, but I understand what you're telling 11 me. 12 MR. HINDERAKER: Yeah. And that value 13 proposition, if you will, is going to come from his analysis 14 of these case-specific facts. So it comes from, if you 15 will, the bottom up, the case-specific facts, not some Blaze 16 Advisor expertise top-down. 17 THE COURT: And he's not offering damage numbers? 18 MR. HINDERAKER: He's not offering damage numbers. 19 THE COURT: Ms. Godesky? 20 MS. GODESKY: Your Honor, slide 3 in their 21 presentation for Mr. Whitener -- 22 THE COURT: I may be wrong. 23 MS. GODESKY: Summary of opinions. "Blaze Advisor 24 added significant value to the process of selling insurance 25 and hence added significant value to defendants' business."</p>	<p style="text-align: right;">1377</p> <p>1 challenge qualifications under Rule 702 in a <i>Daubert</i> motion, 2 and we can do so now. 3 THE COURT: I understand. 4 MR. HINDERAKER: Again, if I could repeat myself a 5 bit. It's -- looking at the defendants' documents without 6 having expertise in the insurance industry doesn't tell you 7 the picture that comes with studying how defendants use 8 Blaze Advisor with that knowledge from the insurance 9 industry. 10 So why did -- why did something matter -- why did 11 what the defendants were doing with Blaze Advisor matter? 12 It mattered because in the process of selling insurance, 13 that effect -- that attribute affects the outcome of the 14 selling process. 15 So I don't mind the jury being quite clear that 16 he's not a Blaze Advisor expert. He's an insurance industry 17 expert. 18 MS. GODESKY: Your Honor, his opinions go far 19 beyond that as disclosed on the slides and in his report. 20 If he was simply offering opinions about, this is the 21 process of selling insurance and certain things are 22 important in the process of selling insurance, that might be 23 appropriate. 24 But he was disclosed as an expert who offered 25 opinions on how Blaze contributed to gross written premium</p>

<p style="text-align: right;">1378</p> <p>1 at Chubb, and he does not have the expertise to offer those</p> <p>2 opinions.</p> <p>3 MR. HINDERAKER: Well, that's not exactly accurate</p> <p>4 because the testimony is that if you can -- that defendants,</p> <p>5 in fact, achieved certain outcomes using Blaze Advisor, by</p> <p>6 the defendants own statements. And those outcomes mattered</p> <p>7 in the process of selling insurance because of the elements</p> <p>8 of the process of selling insurance.</p> <p>9 So you take -- you take what the defendants have</p> <p>10 acknowledged as why they were using it, what they were</p> <p>11 trying to achieve, and you apply it to the process of</p> <p>12 selling insurance and why it matters in the process of</p> <p>13 selling insurance. And you reach a conclusion that it had</p> <p>14 an impact. It was significant.</p> <p>15 He's not quantifying it in terms of -- he's not</p> <p>16 touching it to revenue. That was a different expert. He's</p> <p>17 just saying, how does this matter to the process of selling</p> <p>18 insurance, from the defendants' own experience.</p> <p>19 THE COURT: Understood. I understand your</p> <p>20 objection. I'm going to allow him to testify. You can</p> <p>21 bring this all out in cross. You can make objections during</p> <p>22 his testimony, if you wish. But I'll hear the testimony or</p> <p>23 we'll begin with the testimony, and we'll cross that bridge</p> <p>24 here when we get to it.</p> <p>25 MS. GODESKY: Your Honor, just for the record,</p>	<p style="text-align: right;">1380</p> <p>1 So let's bring the jury in.</p> <p>2 <b>IN OPEN COURT</b></p> <p>3 THE COURT: Go ahead and be seated.</p> <p>4 Mr. Whitener, come on back up to the witness</p> <p>5 stand, if you would.</p> <p>6 THE WITNESS: Mic is on?</p> <p>7 MR. HINDERAKER: Yep. Sounds good. We can hear</p> <p>8 you.</p> <p>9 BY MR. HINDERAKER:</p> <p>10 <b>Q.</b> Let's turn to -- let's turn to a discussion of the</p> <p>11 different kinds of insurance products in the marketplace so</p> <p>12 we start to get that understanding.</p> <p>13 If we could go to slide 7, please.</p> <p>14 This slide obviously shows four different kinds of</p> <p>15 insurance. And is that -- that's accurate? We can put --</p> <p>16 we can put insurance products into these four categories?</p> <p>17 <b>A.</b> You can. I generally refer to these as market segments.</p> <p>18 <b>Q.</b> Market segments. All right.</p> <p>19 Well, I'd like to just go through each one so we</p> <p>20 have an understanding of the marketplace with respect to</p> <p>21 insurance products. So if -- I think I can control this for</p> <p>22 a moment.</p> <p>23 Let's go to specialty insurance. Tell us what it</p> <p>24 is, please.</p> <p>25 <b>A.</b> Specialty insurance is a type of commercial insurance</p>
<p style="text-align: right;">1379</p> <p>1 I'll lodge the additional objection that this is</p> <p>2 particularly prejudicial given his lack of qualifications</p> <p>3 and the fact that this all goes to the disgorgement question</p> <p>4 that's going to be decided by the Court, not the jury.</p> <p>5 And now they're hearing testimony from someone who</p> <p>6 is, I think admittedly by plaintiffs, not qualified to</p> <p>7 testify about Blaze Advisor.</p> <p>8 With that, is he presented as qualified in</p> <p>9 insurance? Is that the qualification that the Court is</p> <p>10 presenting? I'm just trying to understand if he's allowed</p> <p>11 to testify, what is the qualification?</p> <p>12 THE COURT: He's testified as to the width and</p> <p>13 breadth of his experience and expertise in the insurance</p> <p>14 industry and his knowledge of the use of technology in</p> <p>15 underwriting, generally speaking. Beyond that, he has Blaze</p> <p>16 specific knowledge derived from the documents.</p> <p>17 So on that basis and not knowing exactly what's</p> <p>18 coming out of the witness' mouth, I'm going to let him</p> <p>19 testify. And I understand your concern, but let me be</p> <p>20 blunt. All of this is things that would have been</p> <p>21 beneficially raised on <i>Daubert</i> motions, and if not at</p> <p>22 <i>Daubert</i> motions, then raised in motions in limine, and we</p> <p>23 could have addressed it then.</p> <p>24 And I didn't use the word "waiver." I didn't say</p> <p>25 you'd waived it.</p>	<p style="text-align: right;">1381</p> <p>1 generally segmented out from an organizational standpoint</p> <p>2 inside of the underwriting functions of a company, the</p> <p>3 corporate underwriting functions, even front line</p> <p>4 underwriting functions.</p> <p>5 Specialty insurance is insurance for unique risk,</p> <p>6 and I'll use the phrase "as opposed to mainstream</p> <p>7 commercial." Commercial insurance, relatively less complex.</p> <p>8 Special insurance, very complex. A good example of this</p> <p>9 might be directors and officers insurance. This usually</p> <p>10 revolves around various types of professional liability or</p> <p>11 unique risk.</p> <p>12 There was a time in the past where the Bengal</p> <p>13 tiger, the white Bengal tiger at the Cincinnati Zoo was</p> <p>14 loaned, I believe, to the San Diego Zoo and the specialty</p> <p>15 marketplace of the general insurance property casualty</p> <p>16 industry provided that coverage.</p> <p>17 A good example would be medical malpractice.</p> <p>18 Another good example is architects and engineers, people</p> <p>19 that require liability protection because of -- because of</p> <p>20 mistakes.</p> <p>21 <b>Q.</b> In general, does specialty insurance require a higher</p> <p>22 level of underwriting expertise?</p> <p>23 <b>A.</b> Yes.</p> <p>24 <b>Q.</b> And explain why, please.</p> <p>25 <b>A.</b> The risk -- the risks are significantly higher. The</p>

<p>1 UNITED STATES DISTRICT COURT 2 DISTRICT OF MINNESOTA</p> <p>3 -----</p> <p>4 Fair Isaac Corporation, ) File No. 16-cv-1054(DTS) 5 a Delaware Corporation, ) 6 Plaintiff, ) 7 v. ) 8 Federal Insurance Company, ) Courtroom 14W 9 an Indiana corporation, ) Minneapolis, Minnesota 10 and ACE American Insurance ) Wednesday, March 1, 2023 11 Company, a Pennsylvania ) 9:00 a.m. 12 Corporation, ) 13 Defendants. ) 14 -----</p> <p>15 BEFORE THE HONORABLE DAVID T. SCHULTZ 16 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE 17 18 (JURY TRIAL PROCEEDINGS - VOLUME VIII)</p> <p>19 20 21 Proceedings recorded by mechanical stenography; 22 transcript produced by computer.</p> <p>23 * * * 24 25</p>	<p>1438</p> <p>1 INDEX</p> <p>2 PAGE</p> <p>3 <b>RANDOLPH BICKLEY WHITENER</b></p> <p>4 Direct Examination (Resumed) By Mr. Hinderaker 1442 5 Cross Examination By Ms. Godesky 1532 6 Redirect Examination By Mr. Hinderaker 1599</p> <p>7</p> <p>8 <b>N. WILLIAM PAUL WAID</b></p> <p>9 Direct Examination By Mr. Hinderaker 1606</p> <p>10</p> <p>11</p> <p>12 <u>PLAINTIFF'S</u> <u>REC'D</u></p> <p>13 1113 1675 14 1116 1702</p> <p>15 16 17 18 19 20 21 22 23 24 25</p>
<p>1439</p> <p>1 <u>APPEARANCES:</u></p> <p>2 For Plaintiff: MERCHANT &amp; GOULD P.C. 3 BY: ALLEN W. HINDERAKER 4 HEATHER J. KLIEBENSTEIN 5 PAIGE S. STRADLEY 6 MICHAEL A. ERBELE 7 JOSEPH W. DUBIS 8 GABRIELLE L. KIEFER 9 150 South Fifth Street, #2200 10 Minneapolis, Minnesota 55402</p> <p>11 For Defendants: FREDRIKSON &amp; BYRON 12 BY: TERRENCE J. FLEMING 13 LEAH C. JANUS 14 CHRISTOPHER D. PHAM 15 RYAN C. YOUNG 16 PANHIA VANG 17 200 South Sixth Street, #4000 18 Minneapolis, Minnesota 55402</p> <p>19 O'MELVENY &amp; MYERS LLP 20 BY: LEAH GODESKY 21 ANTON METLITSKY 22 DARYN E. RUSH 23 ROXANA GUIDERO 24 Times Square Tower 25 7 Times Square New York, New York 10036</p> <p>26 Court Reporters: RENEE A. ROGGE, RMR-CRR KRISTINE MOUSSEAU, CRR-RPR MARIA V. WEINBECK, RMR-FCRR PAULA RICHTER, RMR-CRR-CRC United States District Courthouse 300 South Fourth Street, Box 1005 Minneapolis, Minnesota 55415</p> <p>* * *</p>	<p>1441</p> <p>1 March 1, 2023 9:00 A.M.</p> <p>2</p> <p>3 <b>(In open court without the Jury present.)</b></p> <p>4 THE COURT: Good morning. Be seated.</p> <p>5 We'll take up the issue with respect to</p> <p>6 Mr. Waid's testimony over the lunch hour. It is clear to</p> <p>7 me he is not getting on the stand before then. All right?</p> <p>8 MS. GODESKY: Yes.</p> <p>9 THE COURT: Okay.</p> <p>10 THE CLERK: All rise for the jury.</p> <p>11 <b>(Jury enters.)</b></p> <p>12</p> <p>13</p> <p>14 <b>(In open court with the Jury present.)</b></p> <p>15 THE COURT: Go ahead and be seated.</p> <p>16 Okay. Good morning. Thanks, everyone, for</p> <p>17 braving our slippery roads.</p> <p>18 Mr. Hinderaker, are you ready to proceed?</p> <p>19 MR. HINDERAKER: I am, Your Honor.</p> <p>20 THE COURT: Go ahead and recall Mr. Whitener</p> <p>21 back.</p> <p>22 MR. HINDERAKER: I would call Mr. Whitener.</p> <p>23 THE COURT: Whitener. Come on up, Mr. Whitener.</p> <p>24 THE WITNESS: Thank you.</p> <p>25 THE COURT: Just remind you as you're walking up,</p>

<p style="text-align: right;"><b>1530</b></p> <p>1 responding to statutory and regulatory changes? Can I stay</p> <p>2 more in compliance with both those statutory and those</p> <p>3 underwriting -- corporate underwriting requirements? Can I</p> <p>4 be easier to do business with? Can I take on -- can I</p> <p>5 scale? Can I take on more business with my existing very,</p> <p>6 very valuable staff?</p> <p>7 And if I do that, take on more business with my</p> <p>8 valuable staff, but I reduce the amount of use of human</p> <p>9 capitol in the "buying, book process," I can now</p> <p>10 concentrate on agents and brokers and spending time with</p> <p>11 them in developing that relationship, my conclusion is that</p> <p>12 Blaze Advisor deployed by agents in some places, not all,</p> <p>13 added significant value to the defendants' business of</p> <p>14 selling insurance.</p> <p>15 Q. Okay. And in drawing this judgment about the</p> <p>16 significant value of selling insurance, do I understand you</p> <p>17 correctly that the attributes or the features that resulted</p> <p>18 in the significant value were the ones you just described:</p> <p>19 Speed, agility, precision and so forth?</p> <p>20 A. That is correct.</p> <p>21 Q. Did you have -- we saw in some of the slides of the</p> <p>22 defendants where some other insurance companies had done</p> <p>23 the work to quantify or measure the improvements that they</p> <p>24 realized with Blaze Advisor.</p> <p>25 Did you have that -- any kind of information like</p>	<p style="text-align: right;"><b>1532</b></p> <p>1 "bind, book, issue" which is how I describe the process of</p> <p>2 selling insurance where deployed.</p> <p>3 MR. HINDERAKER: Thank you for your time.</p> <p>4 THE WITNESS: You're welcome.</p> <p>5 THE COURT: Ms. Godesky.</p> <p>6 MS. GODESKY: Thank you.</p> <p>7 THE WITNESS: Thank you. I'm overburdened here.</p> <p>8 <b>CROSS EXAMINATION</b></p> <p>9 BY MS. GODESKY:</p> <p>10 Q. Good morning, Mr. Whitener.</p> <p>11 A. Good morning, Ms. Godesky.</p> <p>12 Q. You understand I represent the defendants in this case,</p> <p>13 right?</p> <p>14 A. I do, in fact.</p> <p>15 Q. This is your first time testifying as an expert in</p> <p>16 court, right?</p> <p>17 A. That is correct.</p> <p>18 Q. So no court or arbitrator has ever qualified you as an</p> <p>19 expert in rules-based software?</p> <p>20 A. This is correct.</p> <p>21 Q. Your advanced degree is a college degree from Virginia</p> <p>22 Commonwealth University where you majored in education,</p> <p>23 correct?</p> <p>24 A. I have a degree in education, a Bachelor of Science</p> <p>25 from Virginia Commonwealth University. I struggle with the</p>
<p style="text-align: right;"><b>1531</b></p> <p>1 that available to you?</p> <p>2 A. I did not.</p> <p>3 Q. Is it necessary for you to have that kind of</p> <p>4 quantification of information to draw your judgment that</p> <p>5 Blaze Advisor added significant value?</p> <p>6 A. There are two different questions there in the</p> <p>7 underwriting world I live in. The first is, did it? The</p> <p>8 second is, how much did it? Okay? I had more than enough</p> <p>9 information, documentation, 10,000-plus pages, to determine</p> <p>10 that it did it.</p> <p>11 I don't need a tape measurer or a stopwatch to</p> <p>12 know that computers executing transactions is faster than</p> <p>13 humans because I was a human underwriter, and I've worked</p> <p>14 with many companies to -- to deploy technology into those</p> <p>15 processes. I don't know -- I don't need to measure</p> <p>16 variation in compliance because I know a computer system</p> <p>17 with a set of facts is going to make the same decision with</p> <p>18 those facts every time, and I know -- I have been out on</p> <p>19 underwriting audits and audited underwriting functions --</p> <p>20 that humans cannot do that.</p> <p>21 Q. So overall as a -- overall, Blaze Advisor added</p> <p>22 significant value in the selling of insurance by the</p> <p>23 defendants?</p> <p>24 A. My opinion is that Blaze Advisor added significant</p> <p>25 value to the -- to the defendants' process of executing the</p>	<p style="text-align: right;"><b>1533</b></p> <p>1 word "advanced."</p> <p>2 Q. It's a degree in education from Virginia Commonwealth,</p> <p>3 right?</p> <p>4 A. That is correct.</p> <p>5 Q. You've never worked for a software company, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And you've never worked as a software developer,</p> <p>8 correct?</p> <p>9 A. Mostly correct -- well, no. I'm sorry. Correct.</p> <p>10 Q. During direct examination beginning of yesterday, you</p> <p>11 talked about the work you've done at various insurance</p> <p>12 companies, right?</p> <p>13 A. Various insurance companies and various vendors who</p> <p>14 sell goods and services to the insurance companies.</p> <p>15 Q. Okay. So I want to walk through the chronology of your</p> <p>16 employment that Mr. Hinderaker took you through and asked</p> <p>17 you a few different questions.</p> <p>18 So you were at the Hartford, which is an</p> <p>19 insurance company, from the late 1970s to the early 1990s?</p> <p>20 A. Mid-1993.</p> <p>21 Q. Okay. And you did not do any work with decision</p> <p>22 management software at that job because the software did</p> <p>23 not exist in that time period, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And then you were at the Prudential, which is another</p>

<p style="text-align: right;"><b>1534</b></p> <p>1 insurance company, right?</p> <p>2 A. <b>Again, correct.</b></p> <p>3 Q. And that was in the mid-1990s?</p> <p>4 A. <b>Yes.</b></p> <p>5 Q. And there was no use of decision management software</p> <p>6 there, correct?</p> <p>7 A. <b>As you would define decision management software, that</b></p> <p>8 <b>is correct.</b></p> <p>9 Q. The rules software programs we're all here to talk</p> <p>10 about, right?</p> <p>11 A. <b>Correct.</b></p> <p>12 Q. Then you moved on to a mid-sized personal auto</p> <p>13 insurance company in the late 90's to the early 2000s,</p> <p>14 right?</p> <p>15 A. <b>Correct.</b></p> <p>16 Q. And there was no decision management software</p> <p>17 experience there because that company had decided to write</p> <p>18 all of its business rules in code by software engineers,</p> <p>19 right?</p> <p>20 A. <b>Initially, yes.</b></p> <p>21 Q. And you've never been a member of a technology</p> <p>22 department at an insurance company, correct?</p> <p>23 A. <b>Correct.</b></p> <p>24 Q. That means you've never worked as a software engineer</p> <p>25 or computer developer who writes code for an insurance</p>	<p style="text-align: right;"><b>1536</b></p> <p>1 A. <b>Correct.</b></p> <p>2 Q. And while you were there -- you talked about this on</p> <p>3 direct a little bit -- you had a role in selecting Duck</p> <p>4 Creek as the policy administration software for American</p> <p>5 Reliable, correct?</p> <p>6 A. <b>Yes, but I became responsible for the implementation</b></p> <p>7 <b>using Duck Creek.</b></p> <p>8 Q. Okay. And you -- you left, though, after about a year</p> <p>9 at the company, correct?</p> <p>10 A. <b>I believe it was a little closer -- something in that</b></p> <p>11 <b>vicinity.</b></p> <p>12 Q. Yeah. You were only there from '04 to '05, right?</p> <p>13 A. <b>Yes.</b></p> <p>14 Q. So you didn't see the implementation of Duck Creek</p> <p>15 because you moved on?</p> <p>16 A. <b>Correct.</b></p> <p>17 Q. And you didn't work with any rules-based software</p> <p>18 programs while you were at American reliable, like ODM or</p> <p>19 Blaze or Drools, right?</p> <p>20 A. <b>Right.</b></p> <p>21 Q. Then you went to another insurance company, Unitrin</p> <p>22 Specialty, from '05 to '09, right?</p> <p>23 A. <b>Correct.</b></p> <p>24 Q. They sell insurance, but no experience with decision</p> <p>25 management software at Unitrin, right?</p>
<p style="text-align: right;"><b>1535</b></p> <p>1 company, right?</p> <p>2 A. <b>Partially correct -- mostly correct.</b></p> <p>3 Q. And you have no experience sitting down and writing</p> <p>4 rules into computer applications using high-level</p> <p>5 programming language because to the extent that was</p> <p>6 happening at the insurance companies you worked at, other</p> <p>7 people were doing that, correct?</p> <p>8 A. <b>Mostly correct.</b></p> <p>9 Q. And you've never been a technology architect for an</p> <p>10 insurance company, correct?</p> <p>11 A. <b>Correct.</b></p> <p>12 Q. Okay. So then your next job was, you were a</p> <p>13 business -- you were at a business process outsourcer in</p> <p>14 Montana in the early 2000s, right?</p> <p>15 A. <b>Absolutely correct.</b></p> <p>16 Q. And that company did not use rules-based software?</p> <p>17 A. <b>Correct.</b></p> <p>18 Q. Then in the mid-2000s, you joined a midsize property</p> <p>19 and casualty insurance company called American Reliable,</p> <p>20 right?</p> <p>21 A. <b>Again correct.</b></p> <p>22 Q. And you were there from '04 to '05?</p> <p>23 A. <b>Yes.</b></p> <p>24 Q. No decision management software in use at the time you</p> <p>25 joined, correct?</p>	<p style="text-align: right;"><b>1537</b></p> <p>1 A. <b>Correct.</b></p> <p>2 Q. Then you went to a small technology services company</p> <p>3 called Discoverture Solutions?</p> <p>4 A. <b>Correct.</b></p> <p>5 Q. And that position didn't have anything to do with</p> <p>6 rules-based software?</p> <p>7 A. <b>That also is correct.</b></p> <p>8 Q. And so as we've seen over the course of your career,</p> <p>9 you've worked a few different insurances companies but</p> <p>10 never at Chubb, right, or ACE?</p> <p>11 A. <b>Correct.</b></p> <p>12 Q. And so at the time when you sat down to form your</p> <p>13 expert opinions in this case -- and your first report,</p> <p>14 right, Mr. Whitener, was in April of 2019?</p> <p>15 A. <b>Correct.</b></p> <p>16 Q. You had never used any decision management software,</p> <p>17 correct?</p> <p>18 A. <b>Agreed.</b></p> <p>19 Q. And that necessarily includes Blaze?</p> <p>20 A. <b>That necessarily includes Blaze.</b></p> <p>21 Q. So when you sat down to provide all those expert</p> <p>22 opinions in this case about the value of Blaze to Chubb,</p> <p>23 you had never used Blaze or any computer applications that</p> <p>24 included Blaze, correct?</p> <p>25 A. <b>That is correct.</b></p>



<p style="text-align: right;"><b>1538</b></p> <p>1 Q. You had never used IBM ODM?</p> <p>2 A. <b>Correct.</b></p> <p>3 Q. You had never used Drools?</p> <p>4 A. <b>Correct.</b></p> <p>5 Q. And you had never used Red Hat Decision Manager?</p> <p>6 A. <b>Correct.</b></p> <p>7 Q. So that first report you submitted in this case in</p> <p>8 April 2019, with all the appendices, it was more than 50</p> <p>9 pages. Sound right?</p> <p>10 A. <b>I'm fairly certain I can say yes to that one.</b></p> <p>11 Q. And it was all about how Blaze contributes to revenue</p> <p>12 at Chubb, right? All the opinions you just offered with</p> <p>13 Mr. Hinderaker about speed and ease of doing business and</p> <p>14 agility, correct?</p> <p>15 A. <b>Mostly.</b></p> <p>16 Q. But when you wrote those 50 pages of opinions, you</p> <p>17 could not speak to what Blaze looks like to someone who is</p> <p>18 going in and using it to implement rules, correct?</p> <p>19 A. <b>Correct.</b></p> <p>20 Q. And you had never used a computer application that</p> <p>21 incorporated Blaze?</p> <p>22 A. <b>Correct.</b></p> <p>23 Q. Then about a month later, you did your second report in</p> <p>24 this case, and that was due in May of 2019, right?</p> <p>25 A. <b>Sounds right.</b></p>	<p style="text-align: right;"><b>1540</b></p> <p>1 A. <b>Yes.</b></p> <p>2 Q. And you're questioned by Chubb's lawyers for the first</p> <p>3 time, correct?</p> <p>4 A. <b>Correct.</b></p> <p>5 Q. And one day before your deposition about those 75 pages</p> <p>6 of opinions that you'd offered, FICO's lawyers had you sit</p> <p>7 down and watch a Webex presentation about Blaze. Sound</p> <p>8 right?</p> <p>9 A. <b>Mostly.</b></p> <p>10 Q. So that was the first demonstration ever of how Blaze</p> <p>11 works, and it was done after all your opinions were in,</p> <p>12 those 75 pages of opinions, right?</p> <p>13 A. <b>Yes.</b></p> <p>14 Q. Now, you didn't actually use Blaze during this</p> <p>15 demonstration. You weren't coming up with the rules and</p> <p>16 then putting them into the software yourself. That was</p> <p>17 someone at FICO, right?</p> <p>18 A. <b>In the demonstration?</b></p> <p>19 Q. Correct.</p> <p>20 A. <b>I created a rule.</b></p> <p>21 Q. You created a rule, but mostly it was someone at FICO</p> <p>22 running the demo, right?</p> <p>23 A. <b>Correct.</b></p> <p>24 Q. And the demo was about 90 minutes?</p> <p>25 A. <b>I couldn't remember.</b></p>
<p style="text-align: right;"><b>1539</b></p> <p>1 Q. And that was another 25 pages.</p> <p>2 A. <b>Okay.</b></p> <p>3 Q. Focused on the value of Blaze to Chubb?</p> <p>4 A. <b>Approximately.</b></p> <p>5 Q. Focused on the value of Blaze to Chubb?</p> <p>6 A. <b>Again, correct.</b></p> <p>7 Q. So then as of May 2019, you submitted 75 pages of</p> <p>8 written material about the value of Blaze to Chubb, but you</p> <p>9 still hadn't seen the process of implementing rules into</p> <p>10 Blaze, correct?</p> <p>11 A. <b>Would you restate the date, please?</b></p> <p>12 Q. As of May 2019, that second report, 75 pages of</p> <p>13 opinions about the value of Blaze to Chubb, but you still</p> <p>14 hadn't seen the process of implementing rules, correct?</p> <p>15 A. <b>At some point in that time frame, I had been given a</b></p> <p>16 <b>demonstration of Blaze by FICO, but I can't date stamp that</b></p> <p>17 <b>quite as precisely as you're asking.</b></p> <p>18 Q. Well, you were scheduled to provide sworn deposition</p> <p>19 testimony in this case on June 27th, 2019. Does that sound</p> <p>20 right?</p> <p>21 A. <b>Yes.</b></p> <p>22 Q. Okay. And that's the process the jury has heard about</p> <p>23 where you have to come to a conference room and sit down,</p> <p>24 provide sworn testimony about all the opinions you've</p> <p>25 offered, right?</p>	<p style="text-align: right;"><b>1541</b></p> <p>1 Q. Why don't you look in the binder in front of you.</p> <p>2 There is a copy of your deposition transcript from June</p> <p>3 2019.</p> <p>4 A. <b>I'm there.</b></p> <p>5 Q. And why don't we look at page 21 to see if that</p> <p>6 refreshes your recollection?</p> <p>7 A. <b>21 in the box, correct?</b></p> <p>8 Q. Yes, please.</p> <p>9 A. <b>Correct.</b></p> <p>10 Q. A 90-minute demonstration?</p> <p>11 A. <b>Correct.</b></p> <p>12 Q. Okay. And that demo is not particular to any</p> <p>13 particular company's use of Blaze, right?</p> <p>14 A. <b>It was not.</b></p> <p>15 Q. And it wasn't specific to the insurance industry in any</p> <p>16 way?</p> <p>17 A. <b>No, it was not.</b></p> <p>18 Q. The demo had nothing to do with Chubb's use of Blaze?</p> <p>19 A. <b>Correct.</b></p> <p>20 Q. And, in fact, the demo was actually a college</p> <p>21 admissions scenario, correct?</p> <p>22 A. <b>Yes.</b></p> <p>23 Q. So when you sat down to provide sworn testimony to</p> <p>24 Chubb's lawyers about these 75 pages of opinions, that</p> <p>25 90-minute demo on college admission scenarios from FICO was</p>



<p style="text-align: right;"><b>1542</b></p> <p>1 the full extent of your firsthand experience of Blaze,  2 correct?  3 A. <b>Yes, but --</b>  4 Q. "Yes" is good enough for now. Thank you, Mr. Whitener.  5 Do you have a general understanding that  6 peer-reviewed literature is a term that's used for  7 literature that has been read and vetted by people other  8 than those who wrote it?  9 A. <b>Yes.</b>  10 Q. And the idea behind peer-reviewed literature is you  11 have someone looking at the publication and vetting your  12 ideas and conclusions to make sure they're sound, right?  13 A. <b>Yes.</b>  14 Q. And you have never published any peer-reviewed  15 literature on decision management software or rules  16 software, right?  17 A. <b>Correct.</b>  18 Q. And you haven't conducted any studies about the nature  19 and impact of rules software on businesses, correct?  20 A. <b>I'm sorry. Restate that, please.</b>  21 Q. You have not conducted any studies, scientific studies,  22 on the impact of rules software in business, correct?  23 A. <b>Correct.</b>  24 Q. And before you rendered your expert opinions in this  25 case about the value of Blaze, you did not read or consider</p>	<p style="text-align: right;"><b>1544</b></p> <p>1 A. <b>Correct.</b>  2 Q. So let's talk about what you reviewed. You reviewed  3 testimony from Benjamin Baer at FICO, right?  4 A. <b>Correct.</b>  5 Q. We've heard from him. He was one of FICO's first  6 witnesses, and he works in FICO marketing, right?  7 A. <b>Yes.</b>  8 Q. You also read testimony from Chris Ivey, he was another  9 witness from FICO in this trial, right, and he talked about  10 all those statements of work with Chubb?  11 A. <b>Yes.</b>  12 Q. And then you read the testimony of Lawrence Wachs, a  13 FICO/Blaze salesperson, right?  14 A. <b>Again correct.</b>  15 Q. And then you reviewed the deposition testimony of one  16 witness from Chubb, right? That's Henry Mirolyuz.  17 A. <b>No. There were two depositions.</b>  18 Q. That was the only Chubb witness whose deposition  19 transcript FICO's lawyers sent you, correct?  20 A. <b>Correct.</b>  21 Q. And before you rendered all your opinions about the  22 value of Blaze to Chubb, you didn't review the testimony of  23 Mr. Claudio Ghislanzoni, correct?  24 A. <b>Correct.</b>  25 Q. Nor the testimony of Mr. Ramesh Pandey, correct?</p>
<p style="text-align: right;"><b>1543</b></p> <p>1 any peer-reviewed literature about the value of rules  2 software, correct? It's not something you cited.  3 A. <b>Correct.</b>  4 Q. And before you rendered your expert opinions in this  5 case, you didn't read or consider any peer-reviewed  6 literature examining the use of using high-level  7 programming language to code rules in businesses, right?  8 A. <b>Correct.</b>  9 Q. And you aren't aware of, and you haven't identified,  10 any literature or studies that compare the efficiency of  11 using rules software to the efficiency of having software  12 engineers write code themselves, right?  13 A. <b>Correct.</b>  14 Q. Now, before you rendered your expert opinions about all  15 the value that Blaze brought to Chubb, you didn't speak to  16 anyone at Chubb who had actually worked with Blaze, right?  17 A. <b>Correct.</b>  18 Q. And you said during direct examination that you read  19 some deposition testimony from witnesses in this case,  20 right?  21 A. <b>I did.</b>  22 Q. Those transcripts were sent to you by FICO's lawyers?  23 A. <b>Yes.</b>  24 Q. You didn't read every deposition transcript in this  25 case, but you read the ones that they sent you, correct?</p>	<p style="text-align: right;"><b>1545</b></p> <p>1 A. <b>Correct.</b>  2 Q. And you also didn't review the testimony of any Chubb  3 underwriters, right, folks like Alissa Theberge or Mike  4 Schraer, right?  5 A. <b>Correct.</b>  6 Q. And you didn't read the testimony of anyone at Chubb  7 involved in the process of writing rules using Blaze, like  8 Ellen Barnes?  9 A. <b>Correct.</b>  10 Q. Before you rendered your opinions in 1029, you also  11 didn't speak to any other people in the insurance industry,  12 people at companies other than Chubb, about their  13 experiences with Blaze or decision management software?  14 A. <b>Correct.</b>  15 Q. You didn't do a formal survey, right?  16 A. <b>Correct.</b>  17 Q. And you didn't have any informal conversations either,  18 correct?  19 A. <b>Correct.</b>  20 Q. Now, we saw some anecdotes about how other insurance  21 companies use Blaze. Mr. Hinderaker showed you that on the  22 screen, right?  23 A. <b>Yes.</b>  24 Q. We're going to come back to that, but before you  25 rendered your expert opinions, you didn't try to do a study</p>

<p style="text-align: right;"><b>1546</b></p> <p>1 examination how the country's largest insurance companies</p> <p>2 are using rules-based software as opposed to coding by</p> <p>3 software engineers, right?</p> <p>4 A. <b>Correct.</b></p> <p>5 Q. You also haven't conducted any survey of FICO's</p> <p>6 customers regarding their experience with Blaze, right?</p> <p>7 A. <b>Correct.</b></p> <p>8 Q. And you haven't spoken to other rules software vendors</p> <p>9 about their software programs, correct?</p> <p>10 A. <b>Mostly correct.</b></p> <p>11 Q. Now, Mr. Whitener, as a general baseline, based on your</p> <p>12 direct testimony, I'm assuming we can agree that the</p> <p>13 insurance business is complex, right?</p> <p>14 A. <b>I have described it that way before. There are aspects</b></p> <p>15 <b>that are very, very simple, but generally speaking, it is a</b></p> <p>16 <b>complex industry.</b></p> <p>17 Q. Okay. And I want to talk about some of the factors</p> <p>18 that drive an insurance company's ability to earn revenue,</p> <p>19 okay? So the relationship between a broker and an agent,</p> <p>20 on one hand, and the insurance company on the other, that</p> <p>21 can affect where customers want to buy their insurance,</p> <p>22 right?</p> <p>23 A. <b>Yes.</b></p> <p>24 Q. And Blaze doesn't have anything to do with the</p> <p>25 interpersonal relationships that Chubb employees build with</p>	<p style="text-align: right;"><b>1548</b></p> <p>1 A. <b>I would say that different, but it is an important</b></p> <p>2 <b>factor.</b></p> <p>3 Q. And Blaze has no role in Chubb's billing process,</p> <p>4 right?</p> <p>5 A. <b>I saw no documentation that indicated that.</b></p> <p>6 Q. Meaning you haven't seen anything connecting Blaze to</p> <p>7 billing?</p> <p>8 A. <b>Correct.</b></p> <p>9 Q. It's also very important that an insurance company have</p> <p>10 a strong process for handling claims once they come in,</p> <p>11 right?</p> <p>12 A. <b>Correct.</b></p> <p>13 Q. And that's because brokers and agents aren't going to</p> <p>14 have any desire to sell policies on behalf of insurance</p> <p>15 companies that's not efficiently handling claims, right?</p> <p>16 A. <b>Correct.</b></p> <p>17 Q. And it's important that an insurance company pays the</p> <p>18 right amount of money when a claim comes in, and they do so</p> <p>19 pretty fast?</p> <p>20 A. <b>I'm going to say it slightly differently. It is</b></p> <p>21 <b>important that insurance companies pay the right amount,</b></p> <p>22 <b>and it's important that they get that right amount to the</b></p> <p>23 <b>policyholder quickly.</b></p> <p>24 Q. And Blaze, I think as you said during your direct</p> <p>25 examination, was not used in the claims handling side of</p>
<p style="text-align: right;"><b>1547</b></p> <p>1 brokers and agents, right?</p> <p>2 A. <b>Mostly correct.</b></p> <p>3 Q. Blaze isn't taking people out to the ball game or out</p> <p>4 to dinner or a networking lunch, right?</p> <p>5 A. <b>Correct.</b></p> <p>6 Q. And the insurance products that a company sells are</p> <p>7 also part of what determines the success of an insurance</p> <p>8 company, right?</p> <p>9 A. <b>Yes.</b></p> <p>10 Q. Can be a meaningful contributor to what makes a company</p> <p>11 successful, right?</p> <p>12 A. <b>Without products, there is no revenue, correct.</b></p> <p>13 Q. And insurance products are developed based on the</p> <p>14 expertise of the insurance company and the know-how of the</p> <p>15 people who work there, correct?</p> <p>16 A. <b>In combination with statutory requirements of the</b></p> <p>17 <b>states in which they decided to do business and the state</b></p> <p>18 <b>requirements for the products they decided.</b></p> <p>19 Q. Fair enough. And you have not identified any</p> <p>20 particular insurance product that was specifically</p> <p>21 developed at Chubb because of Blaze, right?</p> <p>22 A. <b>Correct.</b></p> <p>23 Q. An error-free billing process is also an important</p> <p>24 factor in attracting customers to an insurance company,</p> <p>25 right?</p>	<p style="text-align: right;"><b>1549</b></p> <p>1 Chubb at all, right?</p> <p>2 A. <b>Correct.</b></p> <p>3 Q. Underwriting is another aspect of how insurance</p> <p>4 companies make money. You were an underwriter, right?</p> <p>5 A. <b>I was, yes.</b></p> <p>6 Q. And from your experience as an underwriter, you know</p> <p>7 that your personal human judgment is crucial to the</p> <p>8 performance and execution of your duties as an underwriter,</p> <p>9 right?</p> <p>10 A. <b>I'm not sure I agree with it.</b></p> <p>11 Q. Okay. Let's look at your deposition transcript at page</p> <p>12 47.</p> <p>13 A. <b>Certainly.</b></p> <p>14 Q. And if I could direct you to page 47, line 7. Let me</p> <p>15 know when you're there.</p> <p>16 A. <b>Patience, counselor.</b></p> <p>17 <b>I'm there.</b></p> <p>18 Q. You were asked at your deposition "Question: Your</p> <p>19 personal judgment was crucial in the performance of your</p> <p>20 underwriting duties, correct?"</p> <p>21 "Answer: Yes."</p> <p>22 That was your testimony at your deposition,</p> <p>23 right?</p> <p>24 A. <b>Yes.</b></p> <p>25 Q. Your emotional quotient or your emotional intelligence</p>

<p style="text-align: right;"><b>1550</b></p> <p>1 was also crucial to your work as an underwriter, right?</p> <p>2 A. <b>Yes.</b></p> <p>3 Q. And Blaze doesn't improve underwriters' ability to</p> <p>4 exercise emotional intelligence and connect with people,</p> <p>5 right?</p> <p>6 A. <b>Yes, but --</b></p> <p>7 Q. I'll take the "yes," thank you.</p> <p>8 Let's focus on the technology aspects of running</p> <p>9 an insurance company. You understand that Chubb uses many,</p> <p>10 many different technologies to sell insurance, right?</p> <p>11 A. <b>Yes.</b></p> <p>12 Q. Now, Mr. Hinderaker made a point of opening your</p> <p>13 testimony this morning by pointing out that Duck Creek</p> <p>14 technology was located in the CSI Express application</p> <p>15 before Chubb purchased its license to use Blaze. Do you</p> <p>16 remember that?</p> <p>17 A. <b>I do.</b></p> <p>18 Q. But before you rendered your expert opinions in this</p> <p>19 case about the so-called importance of Blaze, you didn't do</p> <p>20 anything to investigate how many other technologies were</p> <p>21 deployed at the same time as Blaze at Chubb, correct?</p> <p>22 A. <b>Correct.</b></p> <p>23 Q. And, in fact, at the time you rendered your expert</p> <p>24 report and gave all these opinions, you denied that Chubb</p> <p>25 could possibly be using hundreds of other technologies in</p>	<p style="text-align: right;"><b>1552</b></p> <p>1 making to revenue, right? You haven't looked at that.</p> <p>2 A. <b>Correct.</b></p> <p>3 Q. Now, the jury heard Mr. Ramesh Pandey talk about how</p> <p>4 Duck Creek is the brain of CSI Express. And you heard</p> <p>5 that, too, right?</p> <p>6 A. <b>I did.</b></p> <p>7 Q. But you didn't do anything to figure out how much Blaze</p> <p>8 is contributing to CSI Express relative to Duck Creek,</p> <p>9 correct?</p> <p>10 A. <b>Correct.</b></p> <p>11 Q. And that same would be true for the CUW-IM application,</p> <p>12 right? You didn't do anything to examine, well, how much</p> <p>13 is Blaze doing in CUW-IM as compared to the other</p> <p>14 dozen-plus technologies, right? You didn't look at that?</p> <p>15 A. <b>Correct.</b></p> <p>16 Q. You talked about the rules that were in place at Chubb,</p> <p>17 right?</p> <p>18 A. <b>Yes.</b></p> <p>19 Q. And you understand, though, that when Blaze was used at</p> <p>20 Chubb, it did not process all of the rules that Chubb was</p> <p>21 running in the course of selling insurance, right?</p> <p>22 A. <b>Yes.</b></p> <p>23 Q. And I think you said yesterday that when you sat down</p> <p>24 to review the actual rules that Chubb was running, you</p> <p>25 wanted to make sure that your thoughts about them made</p>
<p style="text-align: right;"><b>1551</b></p> <p>1 addition to Blaze, right?</p> <p>2 A. <b>Yes.</b></p> <p>3 Q. You said, wow, you know, I haven't seen that holy-cow</p> <p>4 number, right, that there would be more than 100 different</p> <p>5 technologies, right?</p> <p>6 A. <b>Correct.</b></p> <p>7 Q. But now you've seen testimony from Mr. Pandey and</p> <p>8 Mr. Ghislanzoni confirming that there were hundreds of</p> <p>9 other technologies in use, right?</p> <p>10 A. <b>I have.</b></p> <p>11 Q. And you didn't consider that at all before you wrote</p> <p>12 those 75 pages of opinions about the value of Blaze to</p> <p>13 Chubb, correct?</p> <p>14 A. <b>Correct.</b></p> <p>15 Q. And you also have not done anything to measure the</p> <p>16 relative contribution that Blaze made to all these things</p> <p>17 like speed, ease of doing business, agility, as compared to</p> <p>18 the benefits that Chubb got from other technologies, right?</p> <p>19 You didn't look into that.</p> <p>20 A. <b>Correct.</b></p> <p>21 Q. And certainly technologies other than Blaze are</p> <p>22 contributing to Chubb's ability to acquire revenue, right?</p> <p>23 A. <b>Yes.</b></p> <p>24 Q. But you haven't made any effort to determine how much</p> <p>25 of a direct contribution those other technologies are</p>	<p style="text-align: right;"><b>1553</b></p> <p>1 sense, so you spoke with a consultant, right, a Brian</p> <p>2 Sacco?</p> <p>3 A. <b>Brian Sacco.</b></p> <p>4 Q. Sacco. And you characterized him as someone who is</p> <p>5 highly knowledgeable about rule repositories, right?</p> <p>6 A. <b>I did.</b></p> <p>7 Q. And you spoke to Mr. Sacco because you personally are</p> <p>8 not someone who is highly knowledgeable about rule</p> <p>9 repositories. That's why you needed to talk to him, right?</p> <p>10 A. <b>Yes.</b></p> <p>11 Q. And before you rendered all your expert opinions in</p> <p>12 this case, you didn't do anything to investigate how many</p> <p>13 other rules Chubb was running in its business, right? You</p> <p>14 said it would be pure, unadulterated speculation for you to</p> <p>15 try to figure out how many non-Blaze rules Chubb was</p> <p>16 running.</p> <p>17 A. <b>I did.</b></p> <p>18 Q. So in offering all these opinions about the value of</p> <p>19 Blaze to Chubb, you didn't do anything to examine the rate</p> <p>20 at which the Blaze technology was adopted at Chubb, right?</p> <p>21 You didn't look at how many rules were they deciding to run</p> <p>22 with Blaze versus how many rules are they having software</p> <p>23 engineers write. You didn't run that comparison.</p> <p>24 A. <b>That is correct.</b></p> <p>25 Q. Now, when Chubb uses Blaze in the selling of insurance,</p>

<p style="text-align: right;"><b>1554</b></p> <p>1 the process of defining the rules is decided and</p> <p>2 articulated by people at Chubb, not people at FICO, right?</p> <p>3 A. <b>Yes.</b></p> <p>4 Q. And the process of defining rules, you know from your</p> <p>5 years in the insurance industry, takes substantial</p> <p>6 experience, right?</p> <p>7 A. <b>Yes.</b></p> <p>8 Q. If the rules do not accurately reflect an insurance</p> <p>9 company's risk appetite and its view of what's an adequate</p> <p>10 premium to charge, the result is, you're going to lose</p> <p>11 money, right?</p> <p>12 A. <b>I would say that the result is negative things are</b></p> <p>13 <b>going to happen, which usually leads to that conclusion.</b></p> <p>14 Q. Without good rules, Mr. Whitener, an insurance company</p> <p>15 cannot make money, right?</p> <p>16 A. <b>Correct.</b></p> <p>17 Q. And to the extent rules are being used to speed things</p> <p>18 up, speed is only good if you're speeding up decisions that</p> <p>19 are good for the insurance company, right?</p> <p>20 A. <b>I agree.</b></p> <p>21 Q. If you're making a lot of quick decisions to bind and</p> <p>22 renew policies that are not profitable, that's not a good</p> <p>23 thing.</p> <p>24 A. <b>Agreed.</b></p> <p>25 Q. Now, you also spoke on direct about how Blaze can</p>	<p style="text-align: right;"><b>1556</b></p> <p>1 Q. You didn't consider that testimony from Mr. Pandey or</p> <p>2 Mr. Ghislanzoni before you offered expert opinions in this</p> <p>3 case, correct? You didn't read their testimony?</p> <p>4 A. <b>Correct.</b></p> <p>5 Q. And you, of course, don't have any personal knowledge</p> <p>6 of the IT infrastructure at Chubb that would allow you to</p> <p>7 say, oh, no, the business people are writing all the rules,</p> <p>8 correct?</p> <p>9 A. <b>Oh, absolutely correct.</b></p> <p>10 MS. GODESKY: Thank you, Vanessa. We can take</p> <p>11 that down.</p> <p>12 BY MS. GODESKY:</p> <p>13 Q. Now, on this topic of your opinion that Chubb realized</p> <p>14 benefits from Blaze by increasing speed, you don't know</p> <p>15 whether Blaze actually increased the speed of responding to</p> <p>16 requests for quotes, correct?</p> <p>17 A. <b>I know that it increased speed. I do not know</b></p> <p>18 <b>precisely how much it increased speed.</b></p> <p>19 Q. Let's look at your deposition transcript at page 135.</p> <p>20 A. <b>In the box, correct?</b></p> <p>21 Q. Please.</p> <p>22 A. <b>Bear with me.</b></p> <p>23 <b>I'm there.</b></p> <p>24 Q. So at page 135, line 14, the question was, "Do you know</p> <p>25 whether Blaze increased the speed of response to quote</p>
<p style="text-align: right;"><b>1555</b></p> <p>1 increase speed compared to having software engineers</p> <p>2 programming the code themselves, right? So-called hard</p> <p>3 coding by some.</p> <p>4 A. <b>Or professional coding, as it was described.</b></p> <p>5 Q. Or professional coding, right?</p> <p>6 Vanessa, can we pull up slide 23, please, from</p> <p>7 Mr. Whitener's presentation? Thank you.</p> <p>8 This is one of the slides you showed the jury</p> <p>9 during your direct examination, right?</p> <p>10 A. <b>It is.</b></p> <p>11 Q. And you wrote -- under hard-coding the rules, you</p> <p>12 wrote, "Hard coding requires substantial IT resources to</p> <p>13 write business rules and changes to business rules in</p> <p>14 computer language into application software." Do you see</p> <p>15 that?</p> <p>16 A. <b>I do.</b></p> <p>17 Q. But you don't have any evidence that when folks at</p> <p>18 Chubb used Blaze, they were able to stop using IT sources,</p> <p>19 right?</p> <p>20 A. <b>Correct.</b></p> <p>21 Q. And, in fact, you heard Mr. Pandey and Mr. Ghislanzoni</p> <p>22 explain from the perspective of Chubb architects that the</p> <p>23 Chubb business folks weren't able to write rules into</p> <p>24 Blaze, right? You heard that.</p> <p>25 A. <b>Yes, but --</b></p>	<p style="text-align: right;"><b>1557</b></p> <p>1 requests in Federal?</p> <p>2 "Answer: I performed no quantitative analysis in</p> <p>3 this process, no. I do not know."</p> <p>4 That was your testimony, correct, Mr. Whitener?</p> <p>5 A. <b>Correct.</b></p> <p>6 Q. And you also can't say whether Chubb was actually able</p> <p>7 to increase its speed of making renewal offers to</p> <p>8 customers, correct?</p> <p>9 A. <b>Based on the same premise, I understand -- I understand</b></p> <p>10 <b>that the renewal does not have to go to a human, it gets</b></p> <p>11 <b>done faster.</b></p> <p>12 Q. Mr. Whitener, you do not know whether Chubb increased</p> <p>13 the speed of making renewal offers because of Blaze,</p> <p>14 correct?</p> <p>15 A. <b>I do not know how much.</b></p> <p>16 Q. Let's look at your deposition transcript at page 135.</p> <p>17 A. <b>I'm there.</b></p> <p>18 Q. Actually, let's look at 136, line 8.</p> <p>19 A. <b>I'm there.</b></p> <p>20 Q. "Question: So you just don't know whether Federal</p> <p>21 increased the speed of making renewal offers because of its</p> <p>22 use of Blaze, correct?</p> <p>23 "Answer: That is correct."</p> <p>24 That was your testimony back in 2019, correct?</p> <p>25 A. <b>Yes, but --</b></p>

<p style="text-align: right;"><b>1558</b></p> <p>1 Q. The "yes" is fine. Thank you.</p> <p>2 A. <b>You're welcome.</b></p> <p>3 Q. And you also don't know, Mr. Whitener, whether Blaze</p> <p>4 actually allowed Chubb to increase its speed to market by</p> <p>5 ensuring compliance with all those reporting requirements</p> <p>6 you talked about, correct?</p> <p>7 A. <b>Yes, but --</b></p> <p>8 Q. The answer is yes, right, Mr. Whitener?</p> <p>9 A. <b>Yes.</b></p> <p>10 Q. Now, you talked on direct examination, and we saw on</p> <p>11 the slide, your opinion that Blaze improved the ease of</p> <p>12 doing business at Chubb, right?</p> <p>13 A. <b>Yes.</b></p> <p>14 Q. But you did not try to quantify in this case whether</p> <p>15 Blaze actually improved Chubb's ease of doing business,</p> <p>16 correct?</p> <p>17 A. <b>Yes. Allow me to point out, I quantified. I measured</b></p> <p>18 <b>none of these things.</b></p> <p>19 Q. You don't know whether Chubb increased the ease of use</p> <p>20 for agents and brokers by using Blaze in certain</p> <p>21 applications. You don't know that, right?</p> <p>22 A. <b>I don't know how much.</b></p> <p>23 Q. You don't know that they did, correct?</p> <p>24 A. <b>Yes, but --</b></p> <p>25 Q. Mr. Whitener, let's look at your deposition testimony</p>	<p style="text-align: right;"><b>1560</b></p> <p>1 about with Mr. Hinderaker.</p> <p>2 A. <b>Yes.</b></p> <p>3 Q. But you did not measure in this case whether Blaze</p> <p>4 actually improved Chubb's ability to define accurate and</p> <p>5 adequate pricing, right?</p> <p>6 A. <b>Correct.</b></p> <p>7 Q. And you can't speak at all to whether Chubb actually</p> <p>8 increased the precision and accuracy of its quotes to</p> <p>9 customers?</p> <p>10 A. <b>Correct.</b></p> <p>11 Q. You also don't know whether Chubb increased the</p> <p>12 precision and adequacy of its renewal offers, do you?</p> <p>13 A. <b>Correct, but --</b></p> <p>14 Q. It's correct, right?</p> <p>15 A. <b>Correct.</b></p> <p>16 Q. There was also talk during your direct examination</p> <p>17 about how the benefits of Blaze allowed Chubb to grow in</p> <p>18 the Small Commercial and mid-market segments. Do you</p> <p>19 remember that?</p> <p>20 A. <b>I do.</b></p> <p>21 Q. But you don't know whether it's, in fact, true that</p> <p>22 Chubb grew in the Small Commercial and mid-market segments</p> <p>23 because of Blaze, right? You can't say that.</p> <p>24 A. <b>Correct.</b></p> <p>25 Q. Vanessa, if we could put up slide 37, please.</p>
<p style="text-align: right;"><b>1559</b></p> <p>1 from June at page 140.</p> <p>2 A. <b>I'm there.</b></p> <p>3 Q. Page 40 [sic], line 25, you were asked --</p> <p>4 A. <b>Counsel -- I'm sorry. Go ahead.</b></p> <p>5 Q. "Is it correct to say that you do not know whether</p> <p>6 Federal increased its ease of use for agents and brokers by</p> <p>7 way of those three bullet points?" And those were your</p> <p>8 bullet points about the value of Blaze, right?</p> <p>9 And you answered, "That is correct." That was</p> <p>10 your testimony, correct?</p> <p>11 A. <b>Counselor, I'm at page 140.</b></p> <p>12 Q. Yes.</p> <p>13 A. <b>Is that where you are?</b></p> <p>14 Q. Yes. At line 25?</p> <p>15 A. <b>I'm sorry. I'm on the wrong line.</b></p> <p>16 Q. You were asked, "Is it correct to say that you do not</p> <p>17 know whether Federal increased the ease of use for agents</p> <p>18 and brokers by way of those three bullet points," and that</p> <p>19 was a reference to all your opinions, right?</p> <p>20 A. <b>You are correct.</b></p> <p>21 Q. And your answer was, "You are correct." Right?</p> <p>22 A. <b>You are correct.</b></p> <p>23 Q. You also testified on direct examination, and we saw</p> <p>24 the slides about how Blaze allowed Chubb to precisely price</p> <p>25 its policies, right? That was another thing you talked</p>	<p style="text-align: right;"><b>1561</b></p> <p>1 This is another slide you showed the jury during</p> <p>2 your direct examination, right?</p> <p>3 A. <b>It is.</b></p> <p>4 Q. And there is this quote, "Technology is a competitive</p> <p>5 weapon." And you said, oh, yes, you know, from my</p> <p>6 examination of the document, Chubb agrees with that, right?</p> <p>7 A. <b>Yes.</b></p> <p>8 Q. This is a discussion about a particular segment of the</p> <p>9 Chubb business where 80 percent or more of submissions were</p> <p>10 not touched by humans as reported in this document, right?</p> <p>11 A. <b>Yes.</b></p> <p>12 Q. You understand from sitting through this trial that</p> <p>13 this comment has nothing to do with Blaze, right? This is</p> <p>14 a discussion about a different area at Chubb that used Duck</p> <p>15 Creek technology, right?</p> <p>16 A. <b>I wasn't, but yes.</b></p> <p>17 Q. You have no reason to believe this is a reference to</p> <p>18 Blaze Advisor software, correct?</p> <p>19 A. <b>No. I believe it's a general statement by the CEO.</b></p> <p>20 MS. GODESKY: Your Honor, I'm about to switch</p> <p>21 topics, if it's a good time to break.</p> <p>22 THE COURT: Let's keep going a few more minutes.</p> <p>23 Got about eight minutes.</p> <p>24 MS. GODESKY: Okay.</p> <p>25 BY MS. GODESKY:</p>

<p style="text-align: right;"><b>1562</b></p> <p>1 Q. Mr. Whitener, during direct examination, you walked us</p> <p>2 through all the computer applications that you say use</p> <p>3 Blaze, right?</p> <p>4 A. <b>Yes.</b></p> <p>5 Q. You have never used any of those computer applications?</p> <p>6 A. <b>Correct.</b></p> <p>7 Q. Let's start with CSI Express. CSI Express is a policy</p> <p>8 administration system, right?</p> <p>9 A. <b>It is.</b></p> <p>10 Q. And like pretty much every policy administration</p> <p>11 system, it's complex, correct?</p> <p>12 A. <b>Correct.</b></p> <p>13 Q. It involves many different technologies?</p> <p>14 A. <b>It does.</b></p> <p>15 Q. But before you rendered all your opinions in this case</p> <p>16 about the value of Blaze and CSI Express, you didn't do</p> <p>17 anything to measure how significant a part of CSI Express</p> <p>18 Blaze is, right?</p> <p>19 A. <b>Yes.</b></p> <p>20 Q. You have not done any analysis of what amount of</p> <p>21 improvement to speed, ease of doing business or adequacy of</p> <p>22 pricing is attributable to Blaze in CSI Express as opposed</p> <p>23 to the application as a whole, correct?</p> <p>24 A. <b>Correct.</b></p> <p>25 Q. That was outside the scope of the responsibilities you</p>	<p style="text-align: right;"><b>1564</b></p> <p>1 Q. Mr. Whitener, before rendering all your opinions in</p> <p>2 this case, you gave zero thought to whether you could have</p> <p>3 measured all this contribution to speed that you say is</p> <p>4 attributable to Blaze, correct?</p> <p>5 A. <b>Zero?</b></p> <p>6 Q. Zero. Sound right?</p> <p>7 A. <b>No. I took zero action based on those thoughts.</b></p> <p>8 Q. Let's look at your deposition page 153.</p> <p>9 A. <b>I'm there.</b></p> <p>10 Q. Line 19. "Question: In your mind, would it be even</p> <p>11 possible to measure the contribution that Blaze has to the</p> <p>12 speed that you've discussed CSI Express creating?</p> <p>13 "Answer: Having had the privilege of giving that</p> <p>14 question zero thought, I can't answer it."</p> <p>15 That's the testimony you gave, correct?</p> <p>16 A. <b>It is.</b></p> <p>17 Q. Let's talk about Profitability Indicator. That's</p> <p>18 another application you talked about, correct?</p> <p>19 A. <b>Correct.</b></p> <p>20 Q. And you said it increased speed relating to renewals in</p> <p>21 response to requests for quotes, correct?</p> <p>22 A. <b>I'm sorry. Repeat that.</b></p> <p>23 Q. You talked about how it increases speed because of</p> <p>24 Blaze, right?</p> <p>25 A. <b>I did.</b></p>
<p style="text-align: right;"><b>1563</b></p> <p>1 had in this case, right?</p> <p>2 A. <b>Correct.</b></p> <p>3 Q. In fact, before rendering expert opinions in this case,</p> <p>4 you spent less than one second reviewing the components of</p> <p>5 CSI Express that had nothing to do with Blaze, correct?</p> <p>6 A. <b>Correct.</b></p> <p>7 Q. And you spoke a lot on direct examination about how</p> <p>8 Blaze must have brought speed to CSI Express, but you</p> <p>9 haven't done any work to try to determine whether you're</p> <p>10 talking about one day, two days or hours, right?</p> <p>11 A. <b>You are correct.</b></p> <p>12 Q. You didn't look at that.</p> <p>13 A. <b>Correct.</b></p> <p>14 Q. And also in the context of CSI Express, you do not know</p> <p>15 whether CSI Express actually increased the speed of</p> <p>16 response to requests for quotes at Chubb, right?</p> <p>17 A. <b>Yes, but --</b></p> <p>18 Q. You do not know, right, Mr. Whitener?</p> <p>19 A. <b>Yes.</b></p> <p>20 Q. You don't know.</p> <p>21 A. <b>Yes.</b></p> <p>22 Q. And you do not know whether the speed of making renewal</p> <p>23 offers through CSI Express was actually increased because</p> <p>24 of Blaze. You cannot say that, right?</p> <p>25 A. <b>I cannot say how much. I can say I believe it was.</b></p>	<p style="text-align: right;"><b>1565</b></p> <p>1 Q. And Profitability Indicator is part of the CSI Express</p> <p>2 application?</p> <p>3 A. <b>It is.</b></p> <p>4 Q. Counted as a separate application on your direct</p> <p>5 examination, but it's part of CSI Express, right?</p> <p>6 A. <b>It is an additional application deployed inside of CSI</b></p> <p>7 <b>Express.</b></p> <p>8 Q. And you don't know whether Profitability Indicator,</p> <p>9 including Blaze, actually contributed to increased</p> <p>10 revenues, right?</p> <p>11 A. <b>Excuse me. I didn't -- yes, I did not measure</b></p> <p>12 <b>anything.</b></p> <p>13 Q. Let's move on to DecisionPoint. You talked about all</p> <p>14 of the value that Blaze brought to DecisionPoint during</p> <p>15 your direct examination, right?</p> <p>16 A. <b>Yes.</b></p> <p>17 Q. And DecisionPoint, just like Profitability Indicator,</p> <p>18 is part of CSI Express, correct?</p> <p>19 A. <b>Yes.</b></p> <p>20 Q. You're sort of counting it separately on your slides,</p> <p>21 right?</p> <p>22 A. <b>Yes.</b></p> <p>23 Q. You don't know whether DecisionPoint actually</p> <p>24 contributed to revenue at Chubb, correct?</p> <p>25 A. <b>Yes, but --</b></p>



<p style="text-align: right;"><b>1566</b></p> <p>1 Q. It's correct, right, Mr. Whitener?</p> <p>2 A. <b>Yes.</b></p> <p>3 Q. Next up was Evolution. Based on your review of the</p> <p>4 record in this case, you agree that Evolution uses many</p> <p>5 different technologies in addition to Blaze, right?</p> <p>6 A. <b>Yes.</b></p> <p>7 Q. And you do not know whether the speed of response to</p> <p>8 quotes or requests for renewal were actually increasing</p> <p>9 because of Blaze, right?</p> <p>10 A. <b>Yes, but -- yes.</b></p> <p>11 Q. You don't know?</p> <p>12 A. <b>Yes.</b></p> <p>13 Q. And you haven't done anything to determine whether the</p> <p>14 use of Blaze in Evolution actually improved the</p> <p>15 availability of underwriting, correct?</p> <p>16 A. <b>Correct.</b></p> <p>17 Q. Then you talked about Adapt. Adapt is a policy</p> <p>18 administration system, right?</p> <p>19 A. <b>It is.</b></p> <p>20 Q. It is complex, correct?</p> <p>21 A. <b>Yes.</b></p> <p>22 Q. And you cannot say whether any of the benefits that you</p> <p>23 talked about on direct examination with Mr. Hinderaker were</p> <p>24 actually realized by Chubb, correct?</p> <p>25 A. <b>Correct.</b></p>	<p style="text-align: right;"><b>1568</b></p> <p>1 A. <b>Correct.</b></p> <p>2 Q. And you haven't done any analysis to determine whether</p> <p>3 Blaze's incorporation in Premium Booking meant that Chubb</p> <p>4 could report data for their new products faster, right?</p> <p>5 A. <b>Correct.</b></p> <p>6 Q. Next was TAPS, the Texas Accident Prevention System.</p> <p>7 And you are aware that witnesses have testified in this</p> <p>8 case that the function Blaze performed in TAPS could have</p> <p>9 just as easily have been performed by an Excel spreadsheet,</p> <p>10 right?</p> <p>11 A. <b>Yes.</b></p> <p>12 Q. You can't speak to whether or not that's true. You</p> <p>13 don't know.</p> <p>14 A. <b>I know that the documents say that.</b></p> <p>15 Q. But you agree, it's certainly possible that other</p> <p>16 software could have been used in TAPS to perform exactly</p> <p>17 the same function as Blaze, right?</p> <p>18 A. <b>Yes.</b></p> <p>19 Q. And you don't know whether Blaze's inclusion in TAPS is</p> <p>20 what actually ensured that each policy written in the</p> <p>21 workers' compensation line of business at Chubb was in</p> <p>22 compliance with Texas regulations, correct?</p> <p>23 A. <b>May I ask you to restate?</b></p> <p>24 Q. You don't know whether Blaze's inclusion in TAPS is</p> <p>25 what was actually ensuring that all of these workers' comp</p>
<p style="text-align: right;"><b>1567</b></p> <p>1 Q. Cornerstone is another policy administration system for</p> <p>2 all those surety bonds, right?</p> <p>3 A. <b>Correct.</b></p> <p>4 Q. Also complex.</p> <p>5 A. <b>Correct.</b></p> <p>6 Q. And you don't know whether any of the benefits that you</p> <p>7 spoke about on direct examination were actually realized by</p> <p>8 Chubb because of Blaze, correct?</p> <p>9 A. <b>Yes.</b></p> <p>10 Q. Then we have these compliance systems. Premium Booking</p> <p>11 is one of them, right?</p> <p>12 A. <b>Yes.</b></p> <p>13 Q. That's also in CSI Express, right?</p> <p>14 A. <b>Yes.</b></p> <p>15 Q. And the process underlying the Premium Booking</p> <p>16 application used at Chubb is complex.</p> <p>17 A. <b>Yes.</b></p> <p>18 Q. But before rendering all your expert opinions about the</p> <p>19 value of Blaze and Premium Booking, you didn't do anything</p> <p>20 to investigate what systems and software other than Blaze</p> <p>21 are used in Premium Booking, correct?</p> <p>22 A. <b>Correct.</b></p> <p>23 Q. And you haven't conducted any analysis to determine</p> <p>24 whether Premium Booking actually enabled Chubb to bring new</p> <p>25 products to market faster, right?</p>	<p style="text-align: right;"><b>1569</b></p> <p>1 insurance policies satisfied Texas regulations, correct?</p> <p>2 A. <b>Correct.</b></p> <p>3 Q. Then you talked about IRMA. You have not determined</p> <p>4 whether IRMA actually contributes to revenue at Chubb by</p> <p>5 ensuring that quoted and issued policies are compliant,</p> <p>6 right?</p> <p>7 A. <b>Correct.</b></p> <p>8 Q. Then there was CUW inventory management. That was</p> <p>9 another application you walked us through, correct?</p> <p>10 A. <b>Yes.</b></p> <p>11 Q. It uses many different technologies, right,</p> <p>12 Mr. Whitener?</p> <p>13 A. <b>If you're referring to CUW, that is correct.</b></p> <p>14 Q. And you cannot say anything as to whether the inclusion</p> <p>15 of Blaze in CUW-IM actually accelerated inventory</p> <p>16 management at Chubb, correct?</p> <p>17 A. <b>Correct.</b></p> <p>18 THE COURT: Ms. Godesky, are you still at a</p> <p>19 convenient breaking point?</p> <p>20 MS. GODESKY: Sure.</p> <p>21 THE COURT: Or --</p> <p>22 MS. GODESKY: Yeah, it's fine. Thank you.</p> <p>23 THE COURT: All right. Members of the Jury,</p> <p>24 we're take our lunchtime recess. Be back in the courtroom</p> <p>25 at one o'clock.</p>



1594

1 Q. So before the lunch break, we were going through all  
2 the different computer applications at Chubb that used  
3 Blaze that you talked about with Mr. Hinderaker, right?  
4 A. **Agreed.**  
5 Q. And the next one I want to talk about is Brokersite.  
6 That is another application that you talked about during  
7 direct, correct?  
8 A. **Correct.**  
9 Q. And you were in court yesterday, and you've heard  
10 Mr. Mirolyuz at Chubb testify that Brokersite does not use  
11 Blaze Advisor, correct?  
12 A. **Correct.**  
13 Q. And you, of course, never worked at Chubb, so you don't  
14 have a basis to dispute that with your personal knowledge,  
15 right?  
16 A. **Correct.**  
17 Q. CIS Claims is another application that you talked about  
18 with Mr. Hinderaker, right?  
19 A. **Correct.**  
20 Q. And even though it's called claims, it is not a claims  
21 handling application, right?  
22 A. **Correct.**  
23 Q. And you cannot say whether the use of CIS Claims  
24 contributed to Chubb's revenue, correct?  
25 A. **I disagree.**

1595

1 Q. Let's look at your deposition at page 211.  
2 A. **Bear with me.**  
3 Q. Sure.  
4 A. **I did better this time.**  
5 Q. Your deposition at page 211, line 7. "Question: Do  
6 you know whether that use of CIS Claims in fact contributes  
7 to Federal's revenue?  
8 "Answer: I have done no quantification research,  
9 nor have I talked with anyone at Federal, Chubb, ACE  
10 Limited."  
11 That was your answer at your deposition, correct,  
12 Mr. Whitener?  
13 A. **Correct.**  
14 Q. Now, Blaze is not the only decision management software  
15 out there. Alternatives do exist, correct?  
16 A. **Correct.**  
17 Q. And your report identifies ten of them, right?  
18 A. **Approximately, yes.**  
19 Q. And those alternative decision management software  
20 products could have been used in the computer applications  
21 at Chubb that we've all been discussing in this trial,  
22 right?  
23 A. **Yes. I'm sorry. Yes.**  
24 Q. But in forming your opinions in this case, you did not  
25 look at all at those other decision management softwares

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1 and analyze how they compare to Blaze, correct?  
2 A. **Correct.**  
3 Q. Now, during your questioning with Mr. Hinderaker, you  
4 talked a bit about other insurance companies making use of  
5 rules software, right?  
6 A. **I'm sorry. Say that again.**  
7 Q. During your direct examination, you talked a little bit  
8 about other insurance companies using Blaze.  
9 A. **Yes.**  
10 Q. And if we could pull up, Vanessa, slide 28 from  
11 Mr. Whitener's PowerPoint.  
12 This is one of those slides, right, Mr. Whitener?  
13 A. **It is.**  
14 Q. And Mr. Hinderaker showed you this slide during your  
15 direct and he said, you know, this is internal  
16 communications at Chubb, right?  
17 A. **Yes.**  
18 Q. He made a point of saying, this was Chubb reporting to  
19 themselves about use of Blaze at other companies, right?  
20 A. **Yes.**  
21 Q. And do you see at the bottom of this document, there's  
22 a source listed?  
23 A. **It is.**  
24 Q. Who is the source?  
25 A. **Fair Isaac.**

1597

1 Q. And if you go to slide 28, Vanessa, the next slide or  
2 29.  
3 There's the continued discussion of how Blaze's  
4 apparently being used in the P&C industry, right?  
5 A. **Yes.**  
6 Q. And what's the source on that slide?  
7 A. **Fair Isaac.**  
8 Q. And as we discussed earlier, before you rendered your  
9 expert opinions in this case about the value of Blaze to  
10 Chubb, you didn't conduct a study of how all these  
11 insurance companies are using Blaze as compared to having  
12 software engineers code.  
13 A. **That's correct.**  
14 Q. And you heard, sitting through this trial, that Chubb  
15 used decision management software in just one percent of  
16 its 1500 computer applications before the merger, right?  
17 A. **As measured on a number of applications footprint  
18 basis, yes.**  
19 Q. And they were using software engineers to code the  
20 rules in all the other applications, right? That's the  
21 testimony.  
22 A. **I believe so.**  
23 Q. And the decision -- that was a decision that Chubb made  
24 before the merger, even though it had an enterprise-wide  
25 license to use Blaze without any limit on the number of

<p style="text-align: right;"><b>1598</b></p> <p>1 applications, correct?</p> <p>2 A. <b>That is my understanding.</b></p> <p>3 Q. That's a pretty low rate of adoption, right,</p> <p>4 Mr. Whitener? One percent? It's pretty low.</p> <p>5 A. <b>Yes.</b></p> <p>6 Q. And then you heard from Mr. Ghislanzoni that at ACE</p> <p>7 before the merger, ACE had decided to put Blaze into one</p> <p>8 computer application and then this ODM decision management</p> <p>9 program in about three applications. You heard him testify</p> <p>10 about that, right?</p> <p>11 A. <b>I heard the testimony.</b></p> <p>12 Q. So at ACE, another giant insurance company, they're</p> <p>13 only using rules software in less than one percent of their</p> <p>14 applications, right?</p> <p>15 A. <b>Sounds right.</b></p> <p>16 Q. And you don't have any basis to disagree with</p> <p>17 Mr. Ghislanzoni's testimony that ACE didn't see a benefit</p> <p>18 to using rules software more widely, correct?</p> <p>19 A. <b>No.</b></p> <p>20 Q. And then you also heard Mr. Ghislanzoni explain that at</p> <p>21 the combined ACE/Chubb entity today, rules software is</p> <p>22 still used in only one percent of all of their computer</p> <p>23 applications, right?</p> <p>24 A. <b>Yes.</b></p> <p>25 Q. And you have no basis to disagree with that, correct?</p>	<p style="text-align: right;"><b>1600</b></p> <p>1 that -- the analysis that you did make as opposed to the</p> <p>2 analysis that you did not make. So let me focus on the</p> <p>3 analysis that you did make.</p> <p>4 There were at various times in your answers to</p> <p>5 the last set of questions where you would say mostly</p> <p>6 correct, partially correct, yes, but, correct, but.</p> <p>7 What was the qualification that you were trying</p> <p>8 to express?</p> <p>9 MS. GODESKY: Objection.</p> <p>10 THE COURT: Overruled.</p> <p>11 THE WITNESS: As I mentioned earlier, in my</p> <p>12 underwriting thought process, there's a difference between</p> <p>13 what something does and how much something does something.</p> <p>14 So when you ask me does it make things faster? Yes. I've</p> <p>15 been at this for a couple of decades. Okay. Maybe more</p> <p>16 than a couple decades.</p> <p>17 And the pursuit of responding to requests for new</p> <p>18 business and improving that response timing and -- has been</p> <p>19 a key strategy for 44 years. In fact, I was reading</p> <p>20 Property Casualty 360 about three weeks ago, and another</p> <p>21 company whose name escapes me, property casualty insurance</p> <p>22 company, licensed another software package and in their</p> <p>23 reasoning they quoted speed.</p> <p>24 So that's an important thing. And when I go to</p> <p>25 ease of doing business, I can say the same things. These</p>
<p style="text-align: right;"><b>1599</b></p> <p>1 A. <b>None.</b></p> <p>2 Q. And unlike Mr. Ghislanzoni and Mr. Pandey, as part of</p> <p>3 your day-to-day work, you've never spent time analyzing the</p> <p>4 efficiencies and functionality of rules software versus</p> <p>5 coding by software engineers, correct?</p> <p>6 A. <b>In terms of the current technology, that is correct.</b></p> <p>7 Q. Now at the end of your examination, we all saw this</p> <p>8 final summary slide, right, and the final summary slide was</p> <p>9 Blaze brought value to Chubb.</p> <p>10 That's the summary of your opinion, correct?</p> <p>11 A. <b>I believe I added the word "significant" but yes.</b></p> <p>12 Q. Significant value. That's the summary of your opinion,</p> <p>13 right?</p> <p>14 A. <b>Correct.</b></p> <p>15 Q. But you do not know whether Blaze actually contributed</p> <p>16 to any increase in revenue or profit at Chubb, correct?</p> <p>17 A. <b>I did -- correct. I did not measure anything.</b></p> <p>18 Q. Thank you.</p> <p>19 I have no further questions.</p> <p>20 A. <b>Thank you.</b></p> <p>21 THE COURT: Mr. Hinderaker, redirect.</p> <p>22 MR. HINDERAKER: Thank you.</p> <p>23 <u>REDIRECT EXAMINATION</u></p> <p>24 BY MR. HINDERAKER:</p> <p>25 Q. Mr. Whitener, my purpose is to talk about the analysis</p>	<p style="text-align: right;"><b>1601</b></p> <p>1 are, these are value points that the property casualty</p> <p>2 insurance company pursues and pursues intentionally. How</p> <p>3 much they get in terms of deployment of an application,</p> <p>4 they don't measure it. I haven't measured it.</p> <p>5 And in all of the documentation I was provided,</p> <p>6 there was nothing that could speak to any of that.</p> <p>7 BY MR. HINDERAKER:</p> <p>8 Q. And, for example, well I'll go back to that, but I want</p> <p>9 to, I guess, stay on this examination for a moment, this</p> <p>10 line.</p> <p>11 And let me bring you to -- you were asked about</p> <p>12 some stuff on your deposition at page 135. And if you can</p> <p>13 find page 135, please.</p> <p>14 MS. GODESKY: Objection.</p> <p>15 THE COURT: Sustained.</p> <p>16 BY MR. HINDERAKER:</p> <p>17 Q. I'd like to -- Ms. Godesky asked you to look at</p> <p>18 page 135, line 22, to 136, line 6. And she read -- I'd</p> <p>19 like to read the rest of the testimony.</p> <p>20 MS. GODESKY: Objection.</p> <p>21 THE COURT: Sustained. You can ask him the</p> <p>22 questions.</p> <p>23 MR. HINDERAKER: Okay.</p> <p>24 BY MR. HINDERAKER:</p> <p>25 Q. It's, as you just said, you performed no quantitative</p>